

STANDARDS COMMITTEE

7 MARCH 2007

REPORT OF THE MONITORING OFFICER

DRAFT REVISED CODE OF CONDUCT FOR MEMBERS

INTRODUCTION

1. On 22 January 2007 the Government published a consultation paper and a draft of a new model Code of Conduct for local authority members. The revised Code is the Government's final response to the recommendations of the Standards Board for England who carried out a review of the current Code during 2005. The Standards Committee considered and determined its response to that consultation at its meeting of 11 May 2005.
2. Views on the latest consultation must be submitted by 9 March 2007. On 31 January 2007 all Members of the Standards Committee were e mailed the web link to the full 30 page consultation document and proposed draft Code. The full text of all these documents is therefore not being reproduced with this report. I have included as APPENDIX 1 the DCLG "Commentary on Detailed Amendments" which explains most of the key changes and the thinking behind them. The earlier consultation during 2005 dealt with the issues of principle and so the latest consultation deals largely with drafting and more technical issues on how the changes will work in practice.
3. The timetable for introducing a revised Code is complicated by the fact that there are elections in May 2007, immediately following which all Councillors will be required to sign declarations to abide by the code. The intention appears to be to have a final revised model Code approved by Parliament before May 2007 but then allow Councils up to 6 months to adopt the revised Code. This may mean Councillors having to sign up to the old Code first when elected/re-elected then sign up again to a revised Code in due course (unless there is time for adoption prior to annual meetings in May 2007). The latter option appears to me both unlikely and impractical especially in view of the fact that it would be impossible to introduce training on any revised Code within such a timescale.

KEY OBJECTIVES OF REVISED CODE

4. Apart from the many structural and drafting improvements proposed in the revised Code, the key aims of the revisions are:-
 - To reflect the outcome of the 2005 Standards Board Review;
 - To address the effects of case-law decided since 2002. These include the need to address the issue of how far the Code can and should apply to private life following the High Court decision in October 2006 involving the Mayor of London (the Livingstone case) and modifying the effects of an earlier High Court case (the Richardson case) to allow members to make representations (but not vote) in certain circumstances whilst having a prejudicial interest;
 - To relax certain rules in relation to disclosure of confidential information;
 - To remove the obligation to report allegations of failing to comply with the Code;
 - To modify the "wellbeing" interest to relate only to the relevant Ward rather than the whole of the Authority's area;
 - To create a new category of "public service interest" as to membership of other relevant authorities, public authorities, charities etc or bodies appointed to by the

Council. A public service interest will only be prejudicial where the matter in question relates to the financial affairs of the body or the determination of any approval, licence or permission.

- To impose some additional obligations on councillors (including a prohibition of bullying) and include gifts and hospitality registration and disclosure within the standard registration and interest disclosure process rather than as a separate notification to the Monitoring Officer.
5. The Government's view is that the revised Code of Conduct provides "a clearer simpler and more proportionate Code of Conduct whilst maintaining a rigorous approach to the identification of serious misconduct". Whilst the current draft revised Code represents a conscientious attempt to improve the present Code and resolve many of the issues which have arisen, in my view it remains in need of substantial re-drafting. I have included in the table at APPENDIX 2 a series of suggested comments/responses in relation to each of the provisions of the revised Code. Inevitably most of these raise technical legal drafting issues.
6. The DCLG document at APPENDIX 1 raises a number of questions for local authorities to consider. Insofar as they raise important issues on which I believe comments need to be made, I have included such comments in the table at APPENDIX 2.

THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL

7. This Bill seeks to implement many of the measures included in the recent Government White Paper "Strong and Prosperous Communities". The Bill includes some important provisions relating to the ethical standards framework within which the Code of Conduct sits. These are likely to be effective by 2008. The more important provisions in relation to the ethical framework are:-

Clause 131 – reverses the effect of the Livingstone case by providing that the model Code is not limited to applying to a councillor only in his official capacity.

Clause 132 – the role of the Standards Board for England is to be redefined so that it will play a more strategic role, supervising the system, providing guidance and dealing with only the most serious individual cases. Therefore allegations of misconduct would be presented to local Standards Committees to determine whether there should be an investigation and if so by whom (Monitoring Officer or SBE). In practice the Standards Committee would probably need a "Referrals Sub-Committee" to undertake this "sieving" function to avoid potential conflict in any subsequent hearing. This in turn may need a larger Standards Committee membership (or perhaps a Joint Referrals Sub-Committee with other councils) to ensure distinct memberships of a Referrals Sub-Committee and the Hearing Panels. It also seems likely that the Government will wish to increase the maximum sanctions available to local Standards Committees from the existing 3 months suspension to, perhaps, 12 months.

RECOMMENDATION

I recommend that the Standards Committee considers and adopts the comments/responses to the draft revised Code of Conduct as set out in the table attached in Appendix 2 and authorises me to submit the same to the Government by 9 March 2007.

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'.

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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?

APPENDIX 2

Draft Amended Code of Conduct Text	Comments
<p>STATUTORY INSTRUMENTS</p> <hr/> <p>[2007] No. [xxx]</p> <p>LOCAL GOVERNMENT, ENGLAND AND WALES</p> <p>The Local Authorities (Model Code of Conduct) Order [2007]</p> <p style="text-align: center;"><i>Made - - - -</i> xxx <i>Laid before Parliament</i> xxx <i>Coming into force - -</i> xxx</p> <p>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</p> <p>The Secretary of State has consulted in accordance with section 50(5) of that Act.</p> <p>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.</p>	
<p>Citation, commencement, application and interpretation</p> <p>1.— (1) This Order may be cited as the Local Authorities</p>	<p>1. Sensibly, this provision brings the Greater London Authority into the mainstream, rather than relying on separate application of the Code of Conduct.</p>

<p>(Model Code of Conduct) Order [2007] and comes into force on [xxx].</p> <p>(2) This Order applies—</p> <p>(a) in relation to police authorities in England and Wales; and</p> <p>(b) in relation to the following authorities in England—</p> <p>(i) a county council;</p> <p>(ii) a district council;</p> <p>(iii) a London borough council;</p> <p>(iv) a parish council;</p> <p>(v) the Greater London Authority;</p> <p>(vi) the Metropolitan Police Authority;</p> <p>(vii) the London Fire and Emergency Planning Authority;</p> <p>(viii) the Common Council of the City of London;</p> <p>(ix) the Council of the Isles of Scilly;</p> <p>(x) a fire and rescue authority;</p> <p>(xi) a joint authority;</p> <p>(xii) the Broads Authority; and</p> <p>(xiii) a National Park authority,</p> <p>and references to “authority” are construed accordingly.</p>	
<p>Model Code of Conduct</p> <p>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.</p> <p>(2) Subject to paragraphs (3) to (6), all the provisions of the model code in the Schedule to this Order are mandatory.</p> <p>(3) The following provisions of the model code in the Schedule are not mandatory for authorities which are not operating executive arrangements—</p>	

<ul style="list-style-type: none"> (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). <p>(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—</p> <ul style="list-style-type: none"> (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). <p>(5) The following provisions are not mandatory for parish councils—</p> <ul style="list-style-type: none"> (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). <p>(6) The following provisions are not mandatory for a National Parks authority and the Broads Authority—</p> <ul style="list-style-type: none"> (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). 	
<p>Disapplication</p> <p>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—</p> <ul style="list-style-type: none"> (a) sections 94 to 98 and 105 to the Local Government Act 	

<ul style="list-style-type: none"> (b) 1972; (c) section 30(3A) of the Local Government Act 1974; (d) regulations made or code issued under section 19 and 31 of the Local Government and Housing Act 1989; (e) paragraphs 9 and 10 of Schedule 7 to the Environment Act 1995; (f) 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); (g) section 18 of the Audit Commission Act 1998; and (g) any guidance issued under section 66 of the Greater London Authority Act 1999. 	
<p>Revocation and savings</p> <p>4.— (1) Subject to paragraphs (2) and (3), the following orders are revoked—</p> <ul style="list-style-type: none"> (a) the Local Authorities (Model Code of Conduct) (England) Order 2001 (b) the Parish Councils (Model Code of Conduct) Order 2001 (c) the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001 (d) the Police Authorities (Model Code of Conduct) Order 2001 <p>(2) The Orders referred to in paragraph (1) continue to have effect for the purposes of and for purposes connected with —</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (i) the authority adopts a code of conduct incorporating the mandatory provisions of 	<p>2. The effect of Paragraph 4(2)(a) is that conduct which took place at a time when the old Code was in force may fall to be judged under the new Code, where the allegation is not made until the new Code is in force in that authority. This is manifestly unfair. Accordingly this provision should be amended to provide that any allegation shall be determined in accordance with the Code in force at the time of the events which form the basis of the allegation.</p>

<p>(ii) the model code of conduct in the Schedule to this Order in place of their existing code of conduct;</p> <p>(iii) 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</p> <p>(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;</p> <p>(b) the adjudication of a matter raised in such an allegation; and</p> <p>(c) an appeal against the decision of an interim case tribunal or case tribunal in relation to such an allegation.</p> <p>Signed on behalf of the Secretary of State for Communities and Local Government</p> <p style="text-align: right;"><i>Name</i> [Minister for.....]</p> <p>[Date] Department for Communities and Local Government</p>	
<p style="text-align: center;">SCHEDULE</p> <p style="text-align: center;">THE MODEL CODE OF CONDUCT</p> <p style="text-align: center;">PART 1</p> <p style="text-align: center;">General Provisions</p> <p><i>Interpretation</i></p>	<p>3. It is just as important that members declare personal and prejudicial interests and withdraw from <u>informal</u> meetings such as briefings and meetings with officers of the authority, as it is for formal meetings. Accordingly, the definition of “meeting” needs to be expanded to take in any “meeting with other members or with officers of the authority which is arranged by or on behalf of the authority”.</p>

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.

- 4. There are a number of new phrases in the New Code of Conduct which now require definition, including –
 - a. “Close personal association” – Paragraph 7(c)(i) – This clearly extends beyond mere friendship, but how far? Does “personal” in this context mean that it does not include work colleagues? Given that we were beginning to build up case law on what constituted a “friend”, what benefit is there from this extension?
 - b. “Family” – Paragraph 9(c)(i) – The old Code uses the word “relative” and defines “relative”. The new Code uses “Family”, but fails to define it. Is it merely the member’s household, irrespective of blood relationship? Or is it blood relatives even if living separately? And what degree of separation takes an individual outside the scope of “family”?
 - c. “Lobbying Organisation” – Paragraph 9(4)(b) – Is it a lobbying organisation because it occasionally lobbies, or does it have to lobby members or local authorities, or does it for example have to spend a specified proportion of its annual expenditure on seeking to influence public opinion?
 - d. “Of a financial nature” – Paragraph 11(2) – What is it that makes an interest “of a financial nature”? Is it that the member or a friend etc., or an associated body, stands to gain or lose financially in any way, or does the gain have to be primarily financial, or more directly to the member him or herself?
 - e. “Philanthropic Organisation” – Paragraph 9(3)(b) – Is this the same as “a body directed to charitable purposes”, or does “philanthropic extend beyond the charitable objects in the Charities Act 2006?
 - f. “Relates to” – This phrase is used repeatedly throughout the new Code, in a number of different contexts. In Paragraph 7(a) and (b) it is absolutely fundamental to the definition of a personal interest, and yet is used counter-intuitively, in that the report and matter under discussion may be relates to (in the sense of being directed to) something like improvement of playing

	<p>fields, rather than directly relating to the authority which owns the playing fields or the sports clubs which play on those fields. In Paragraph 9(2)(b) it seems to mean “<u>coming within</u> the authorities functions”. But in Paragraph 9(2)(b)(i) it appears to mean “having an effect upon.” In paragraph 9(2)(b)(ii) it appears to mean “has a greater than average effect upon”. As drafted, the widespread use of the phrase “relates to” is lazy and will create real problems of interpretation for the future.</p>
<p><i>Scope</i></p> <p>1.— (1) A member must observe the authority’s code of conduct whenever he or she—</p> <p>(a) conducts the business of the authority;</p> <p>(b) conducts the business of the office to which he or she is elected or appointed; or</p> <p>(c) acts as a representative of the authority, and references to a member’s official capacity is construed accordingly.</p> <p>(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.</p> <p>(3) Where a member acts as a representative of the authority—</p> <p>(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</p> <p>(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.</p>	<p>5. As drafted, the Code places no explicit obligation on members to observe / comply with the Code other than when they are acting in an official capacity. Paragraph 1(2) dis-applies the majority of the Code of Conduct when a member is acting other than in an official capacity, but does not specifically apply the relevant paragraphs of the Code of Conduct to a member when acting other than in an official capacity. This is poor drafting and should be rectified.</p> <p>6. Paragraph 1(1) should be extended to instances where the member “purports to conduct the business of the authority”. The public do not know the exact powers of members, so do not know when a member is actually acting on behalf of the authority. Where a member claims to be acting as a Councillor, even if he or she is actually outside his or her powers, he or she should be covered by and have to observe the Code of Conduct.</p> <p>7. Paragraph 1(1)(c) perpetuates the lack of definition as to what constitutes a “representative” of the authority. The Standards Board has advised that a member is a “representative” in any circumstances in which the authority has appointed or nominated, or approved his</p>

	<p>or her appointment or nomination, to an outside body. But if a member can be appointed as a representative, it is a necessary concomitant that he or she can be appointed but not as a representative. So there must be something about the appointment or nomination which determines whether the member is or is not a representative. It is suggested that, in order to be a representative, the authority must be able to direct the member to act in the interests of the authority, or to withdraw the appointment and secure the appointment of a more compliant member in the event that the member fails to accord with such an instruction. On that basis, a “representative” would be a member who is appointed or nominated by the authority on the basis that he or she shall act in that capacity in the best interests of the authority.</p> <p>8. The Livingstone judgment recognised that a member could cease to act in an official capacity by advising any person with whom he or she was dealing that he or she was not acting in an official capacity. This was a valuable concession, and the Code should specify that a member is not to be treated as acting in an official capacity in relation to any person if he or she has informed that person that he or she does not intend to regard him or herself as acting in an official capacity, and it is reasonable in the circumstances for him or her to regard themselves as not acting in an official capacity..</p>
<p><i>General obligations</i></p> <p>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</p>	<p>9. In Paragraph 2(2)(b), we need a definition of what constitutes bullying. At the moment the only available definition is the ACAS definition, which requires a course of conduct, rather than just a single incident, and requires that the conduct is intended to denigrate or demean the victim.</p>

<p>statutory duties under the equality enactments (as defined in section 33 of the Equality Act 2006);</p> <p>(b) bully any person;</p> <p>(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—</p> <p>(i) a complainant,</p> <p>(ii) a witness, or</p> <p>(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;</p> <p>(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.</p> <p>(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.</p>	<p>10. In Paragraph 2(2)(d), one action which causes problems in some authorities is that of members giving or offering to give a reference to a candidate for employment or promotion with their authority. Such a reference can be seen as unacceptable pressure on the officer making the appointment or promotion, yet it can be said that it would not be a breach of the Code if the appointing officer were sufficiently resilient to resist any such inference. An unequivocal statement that “no member shall provide or offer to provide a reference for any candidate for employment or promotion with the member’s authority.” would be preferable.</p>
<p>3. A member must not—</p> <p>(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—</p> <p>(i) he or she has the consent of a person authorised to give it;</p> <p>(ii) he or she is required by law to do so; or</p> <p>(iii) the disclosure is—</p> <p>(aa) reasonable and in the public interest;</p> <p>(bb) made in good faith and does not breach any reasonable requirements of the authority;</p> <p>(b) prevent another person from gaining access to</p>	<p>11. In the absence of a definition of the public interest, it would be helpful to apply the test currently used for Fol purposes, perhaps by requiring the member to submit an Fol request to test the point before making the disclosure, at least where there is no over-riding urgency.</p> <p>12. As drafted this does not cover the case of a member who discloses confidential information to a third party, perhaps for a legitimate purpose such as seeking legal or political advice on it, but places no similar obligation of confidentiality on the recipient, thus enabling that third party to publish the confidential information without redress. Accordingly, Paragraph 3(a) should have an</p>

<p>information to which that person is entitled by law.</p>	<p>additional sub-paragraph (iv) as follows – “ the disclosure is made to a third party to enable the member to discharge his or her functions as a member effectively, but on the same terms as to disclosure as applied to the member him or herself.”</p>
<p>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.</p> <p>(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.</p>	<p>13. It would be less open to misinterpretation if “conduct” in this paragraph went replaced with “misconduct.”</p> <p>14. The new Code fails to bring the Code into line with the common law on predetermination and apparent bias, both of which can have very serious consequences for the authority, but are very parallel to the personal and prejudicial interests provisions of the Code.</p>
<p>5. A member—</p> <p>(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</p> <p>(b) must, when using or authorising the use by others of the resources of the authority—</p> <p>(i) act in accordance with the authority’s requirements;</p> <p>(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and</p> <p>(iii) have regard to any Local Authority Code of Publicity made under the Local Government Act 1986.</p>	<p>15. The introduction of the words “attempt to use” is welcomed. However, It is suggested that the amendment be made to the Application Section of the Code as set out in Comment 6, above.</p> <p>16. Paragraph 5(b) should be extended beyond just the resources of the authority to apply to “resources over which the authority exercises control or influence”.</p> <p>17. The re-drafting of Paragraph 5(b)(ii) is to be welcomed. The former Paragraph 5(b)(ii) in the old Code was largely unintelligible. However, there is no definition as to what political use of resources is acceptable and what is unacceptable. It will be necessary for the Standards Board to issue some very clear advice on this point if this provision is to have any effect.</p>
<p>6. A member must when reaching decisions—</p> <p>(a) have regard to any relevant advice provided to him or</p>	<p>18. Whilst the requirement to take decisions in the public interest and not for sectional advantage is implied from</p>

<p>her by—</p> <ul style="list-style-type: none"> (i) the authority’s chief finance officer; and (ii) the authority’s monitoring officer; and <p>(b) give the reasons for those decisions in accordance with the authority’s and any statutory requirements.</p>	<p>the General Principles, it would be very useful to have an explicit statement here to this effect.</p> <p>19. There is no reason to limit this provision to the two statutory officers. It is, for example, just as important that the Development Control Committee have regard to the advice of the Planning Officer. The Welsh Code of Conduct states this very clearly as follows:</p> <p>“8. A member when reaching decisions -</p> <ul style="list-style-type: none"> (a) must reach decisions on the basis of the merits of the circumstances and in the public interest (b) must reach decisions having regard to any relevant advice provided by the authority’s officers – in particular by: <ul style="list-style-type: none"> (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.” <p>20. The omission of the duty to report another member for breach of the Code is noted. Presumably a blatant example of complicity could be dealt with as conduct bringing the member’s office or authority into disrepute.</p>
<p style="text-align: center;">PART 2</p> <p style="text-align: center;">Interests</p> <p><i>Personal interests</i></p> <p>7. A member has a personal interest in any matter where—</p>	<p>21. These provisions have been radically re-structured. The new format usefully brings together in one place the different types of personal interest which were previously set out in Paragraphs 8, 14 and 15 of the Code but in the process it makes some substantial changes, as set out below.</p> <p>22. The use of the phrase “relates to” in Paragraph 7(a) and 7(b) serves only to confuse. This phrase is used in a</p>

<p>(a) it relates to—</p> <ul style="list-style-type: none"> (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; <p>(b) it relates to his or her membership of or position of general control or management in any—</p> <ul style="list-style-type: none"> (i) body to which the member is appointed or nominated by the authority; 	<p>number of different places in the new Code and with a number of different uses. To illustrate, when a member is a member of both a Parish and a District Council, and attends the District Planning Committee, can a planning application be said to “relate to the Parish Council” and therefore give rise to a personal interest simply because the Parish Council has previously made comments on it as consultee, or must it affect property owned by the Parish Council, or have been submitted by the Parish Council? The use of the phrase “relates to” simply serves to confuse. This needs to be changed to a phrase such as “a matter upon which a decision is likely to have a substantial impact upon-.....”</p> <p>23. In Paragraph 7(a)(ii), the deletion of the phrase “the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director”, which appears in the old Code, significantly weakens the provision. For a start, it means that partners in law and accountancy firms no longer have an automatic personal interest. Then, it is very unclear as to what constitutes being “appointed”. Does this cover being appointed to full-time employment, or does it cover a one-off appointment as a consultant, even where that appointment ceased many years ago? It is difficult to see any advantage to the revised wording.</p> <p>24. In Paragraph 7(a)(vi), How can a matter “relate to a gift or hospitality of value £25?” The issue under consideration may affect the provider of the gift or hospitality, but the gift or hospitality is presumably a past event by the time that the matter is under consideration. This is poor drafting, which renders this provision meaningless. IN practice, the issue of gifts and hospitality does not fit easily with that of interests and should be perhaps continue to dealt with separately.</p> <p>25. Paragraph 7(b) requires to be re-drafted as the interest is not in the membership, but rather in the body of which the member is a member.</p> <p>26. The addition of the phrase “including any political party”</p>
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- (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 subparagraph (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.

in Paragraph 7(b)(iv) is useful confirmation.

27. In Paragraph 7(c)(i), the substitution of "one of the member's family or any person with whom the member has a close personal association" in place of "relative", does not clarify at all and, with the omission of the definition of "relative" leaves the Code much less precise than before. See Comment 4 above.
28. The narrowing of the definition of a personal interest in Paragraph 7(c), where it used not to be a personal interest if it was shared with the other council tax payers, rate payers and inhabitants of the authority's area, and will now not be a personal interest if its shared with the majority of the inhabitants of the members' ward or electoral division, is simply wrong. The purpose of the Code is to ensure that members' potential conflicts of interest are apparent. But now, even though a matter which affects the majority of a members' ward is very likely to affect him or her directly, it is not even to be a personal interest. So the member is under no obligation to make any declaration at all. Surely the logic is that this should not be a prejudicial interest, but that the member should at least have to say whether it affects him or her personally!!

<p><i>Disclosure of personal interests</i></p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(7) In this paragraph—</p>	<p>29. Clause 166 of the Local Government and Public Involvement in Health Bill provides for ward Councillors to be able to take decision and actions on their own, within their own wards. It will therefore be essential to extend the interests provisions of the Code of Conduct to apply to such decisions and actions. This can be done by extending the meaning of "meeting" to any occasion when a ward member is considering taking such decision or action. In practice, because of the danger of bias in a single member taking a decision in his own ward, in the area where he or she lives, and probably where many of his relatives and friends also live, it would be sensible to go beyond the parallel provision for executive member decisions and provide that a Ward Councillor shall not take such a decision or action where he or she has even a personal interest.</p> <p>30. The introduction of the exception in relation to "sensitive information" is appreciated, but see comments about registration of sensitive information, below.</p> <p>31. The current Code provides for a personal interest where the matter affects the wellbeing or financial standing of the member, a relative or friend. In the new Code this becomes "the member, a family member, a friend or a close personal associate." As set out against paragraph 1, above, the absence of any definition of a family member (whereas "relative" was previously defined) or close personal associate will cause confusion and uncertainty, and definitions are required. It is unclear what is gained by including such a vague phrase as "close personal associate".</p> <p>32. The new Code still fails to deal with the issue of an "enemy" as opposed to a friend. The fact that the matter affects an "enemy" may well be a stronger motivating force than friendship, yet this issue is not covered, except indirectly through the prohibition on misuse of position to confer a disadvantage.</p>
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<p>(a) a member has a public service interest in a matter where that matter relates to—</p> <ul style="list-style-type: none"> (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 <p>(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.</p>	<p>33. Paragraph 8(7)(a) introduces the concept of a public service interest. The idea is that, where the interest arises from some form of public service on the part of the member, and the member or body does not stand to gain or lose personally from any decision on the matter, the normal restrictions in the Code may be relaxed, to varying degrees. Unfortunately, having introduced this concept, Paragraph 9(4) and 11(3) then apply different definitions of “public service interest” in different contexts, which produces unnecessary confusion.</p>
<p><i>Prejudicial interests</i></p> <p>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.</p> <p>(2) A member does not have a prejudicial interest in a matter where—</p> <ul style="list-style-type: none"> (a) he or she has a public service interest in the matter, unless— <ul style="list-style-type: none"> (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 	<p>34. The test as to what comprises a prejudicial interest remains unchanged. This has now been in use since adopted by the Ombudsman in 1974 and has stood the test of time pretty well.</p> <p>35. In Paragraph 9(2)(a)(i), the new Code provides that in relations to a member with a prejudicial interest as a result of membership of another public body, or a charity or lobbying or philanthropic organisation, he or she may remain and participate as if it were just a personal interest, unless the matter under consideration “relates to the financial affairs of the body”, or to the determination of a license or consent. This is intended to be shorthand for a matter which fundamentally affects that body. But the new Code fails to provide any definition of when a matter “relates to the financial affairs of the body.” Is this just a matter where the primary purpose of the matter is to affect the financial affairs of that body? Is it simply that it has some implication for its financial affairs? And the reference to financial affairs would apparently not cover cases where the proposal would affect the powers or existence of</p>

<p>authority in respect of—</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(4) In this paragraph, a member has a public service interest in a matter where that matter relates to—</p> <ul style="list-style-type: none"> (a) any of the matters referred to in paragraph 	<p>that body. This requires re-drafting.</p> <p>36. In Paragraph 9(2)(a)(ii), it would be sensible to provide that “determination” shall include granting, varying, amending, attaching conditions to, revoking and withdrawing such approval etc..</p> <p>37. In Paragraph 9(2)(b)(v), this provision should be extended to cover the taking out of insurance as well as the granting of an indemnity, but a caveat should be added to say that this does not apply where the indemnity affects the member to a greater degree than other members. It would clearly be inappropriate for an executive member to grant him or herself an extensive indemnity or take out expensive insurance just for his or her own personal protection from liability.</p> <p>38. As set out in Comment 4, above, we need definitions of “lobbying or philanthropic body”.</p> <p>39. It is wrong to include lobbying bodies in this definition of “public service interests”. There is nothing to ensure that a lobbying body is in any sense public spirited, or campaigning for anything other than the private advantage of its members. This provision could even allow a member to form his or her own lobbying body and then claim a public service interest exemption, to speak and vote on a matter in which he or she has a clear personal and prejudicial interest!</p> <p>40. The use of the phrase “public service interest” in subsequent paragraphs with different meanings is thoroughly confusing. This is just poor drafting.</p> <p>41. Paragraph 9(3) is intended to mitigate the effect of the Richardson v North Yorkshire judgment. That case held that, under the old Code, when a member had a prejudicial interest he or she was required to withdraw from the room or chamber where the matter was under consideration, and that meant that even where the member would as a member of the public have been allowed to address the meeting, the prejudicial interest precluded the member from doing so. The new Code allows the meeting to invite the member to attend the</p>
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<p>(b) 8(7)(a); or a charity, a lobbying or philanthropic body of which he or she is a member.</p>	<p>meeting and to make representations and to answer questions, before withdrawing. However, as drafted, it provides that the member shall not have a prejudicial interest, and fails to place a direct obligation on the member to withdraw from the meeting and to take no part in the debate or the vote on the matter. It would be better to provide that the member still has a prejudicial interest, but that it shall not be a breach of the Code for the member at the invitation of the Committee to make representations and answer questions in accordance with any procedures agreed by the authority, but for no other purpose. That would necessarily apply the duty to withdraw as soon as the member had completed his or her representations and answering of questions.</p>
<p><i>Overview and scrutiny committees</i></p> <p>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—</p> <p>(a) the authority’s executive;</p> <p>(b) another of the authority’s—</p> <p>(i) committees or sub-committees; or</p> <p>(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.</p> <p>(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.</p>	<p>42. This provision needs to be extended to cover scrutiny of decisions taken by ward Councillors under Clause 166 of the Local Government and Public Involvement in Health Bill.</p>

<p><i>Participation in relation to prejudicial interests</i></p> <p>11.— (1) Subject to sub-paragraphs (2) and (3), a member with a prejudicial interest in a matter must—</p> <p>(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;</p> <p>(b) not exercise executive functions in relation to that matter; and</p> <p>(c) not seek improperly to influence a decision about that matter.</p> <p>(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—</p> <p>(a) overview and scrutiny committees; and</p> <p>(b) joint or area committees,</p> <p>to the extent that such committees are not exercising functions of the authority or its executive.</p> <p>(3) In this paragraph, a member has a public service interest in a matter where that matter relates to—</p> <p>(a) any of the matters referred to in paragraph 8(7)(a); or</p> <p>(b) a charity, a lobbying or philanthropic body of which he or she is a member.</p>	<p>43. Paragraph 11(1)(a) should be made more specific by saying that the member must withdraw “for the duration of the consideration of the matter”, so that it is clear that the member does not have to withdraw until the particular matter is under consideration and can return for subsequent matters.</p> <p>44. A new paragraph 11(1)(d) should be added to preclude a member from taking a decision or action on a matter as a Ward Councillor under the new powers set out in Clause 166 of the Local Government and Public Involvement in Health Bill.</p> <p>45. We need a definition of what constitutes an interest “of a financial nature” in Paragraph 11(2).</p> <p>46. In Paragraph 11(2)(a), it is unclear how an Overview and Scrutiny Committee can be doing otherwise than “exercising functions of the authority”. The scrutiny function is a function of the authority under Section 21 of the LGA 2000, as amplified by subsequent legislation such as the Police and Justice Act 2006 and now the Local Government and Public Involvement in Health Bill. As a result, as drafted, this provision has no meaning.</p> <p>47. Paragraph 11(3) provides a definition of “public service interest”, which appears to be redundant, as the rest of the paragraph makes no reference to a public service interest. Is it intended that Paragraph 11(2) should start – “A member with a prejudicial interest which is also a public service interest in a matter may”?</p> <p>48. As set out above, we need a definition of “a lobbying or philanthropic body”. It is unclear what “philanthropic” adds to the old definition of “a body directed to charitable purposes.” As set out above, the inclusion of lobbying bodies is wrong, as these could be used as cover for members’ own interests.</p>
<p>PART 3</p>	<p>49. This section is made much more obscure by equating notification to the Monitoring Officer with registration. It</p>

<p style="text-align: center;">Registration of Members' Interests</p> <p><i>Registration of Members' Interests</i></p> <p>12.— (1) A member must, within 28 days of—</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(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.</p>	<p>would make Paragraph 13, on the treatment of sensitive information, much easier if the requirement on the member was merely to notify the Monitoring Officer, and the obligation on the Monitoring Officer was to place the information on the register and to make that register available for inspection.</p>
<p><i>Sensitive information</i></p> <p>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</p>	<p>50. As set out above, if the requirement on the member were merely to notify the Monitoring Officer, and the obligation on the Monitoring Officer was to place the information on the register and to make the register available for inspection, this would allow for a simple structure whereby the member was still required to notify the Monitoring Officer of all personal interests, whether sensitive or not, but the Monitoring Officer would either not have to place information on the register, or not make that part of the register available for inspection if he or she was of the opinion that it</p>

<p>that sensitive information on the register of members' interests.</p> <p>(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.</p>	<p>comprised sensitive information. This would maintain the consistency of the scheme, and give the member the defence against an allegation of failure to register an interest that he or she had actually registered it, and it was recorded in the register, but not available for inspection. So it would provide better protection for a member against such an allegation.</p>