



## NOTICE OF MEETING

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# Standards Committee

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TUESDAY, 18TH JUNE, 2002 at 19:30 HRS - CIVIC CENTRE, HIGH ROAD, WOOD GREEN, N22 8LE.

### AGENDA

**1. APPOINTMENT OF CHAIR AND DEPUTY CHAIR**

**2. APOLOGIES FOR ABSENCE**

**3. URGENT BUSINESS**

The Chair will consider the admission of any late items of urgent business.

**4. TERMS OF REFERENCE OF COMMITTEE (PAGES 1 - 2)**

The chair will consider the administration of any late items of urgent business. (Late items will be considered under the agenda item where they appear. New items will be dealt with at item 12)

**5. MINUTES (PAGES 3 - 6)**

To confirm and sign the minutes of the meetings of the Standards Committee held on 25 March 2002.

**6. REGISTRATION OF INTERESTS (PAGES 7 - 20)**

**7. REPORT ON STANDARDS BOARD CONFERENCE - 20 MAY 2002: (PAGES 21 - 22)**

Feedback from Independent member Roger Lovegrove and the Monitoring Officer on the conference they attended.

**8. CONSULTATION PAPER - LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS - DISCUSSION: (PAGES 23 - 48)**

To consider the response of the Standards Committee to the consultative document.

**9. REPORT ON ANY OUTSTANDING COMPLAINTS AGAINST MEMBERS (PAGES 49 - 62)**

**10. TRAINING PROGRAMME ON IMPLEMENTATION OF ETHICAL FRAMEWORK: (PAGES 63 - 82)**

To include discussion on visits to other authorities, visits to standards board and an invitation to Standards Board representative to meeting of the Standards Committee.

**11. PROCEDURE FOR CONSIDERING DISPENSATIONS: (PAGES 83 - 88)**

To have preliminary discussions on the development of a procedure for the consideration of dispensations.

**12. NEW ITEMS OF URGENT BUSINESS:**

To Consider any new items of urgent business admitted under item 3 above.

**London Borough of Haringey****Standards Committee - Terms of Reference.**

- (a) Promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- (b) Assisting Councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) Advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) Monitoring the operation of the Members' Code of Conduct;
- (e) Advising, training or arranging to train Councillors and co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (f) Granting dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- (g) Dealing with any reports from a case tribunal or interim case tribunal, and any report from the monitoring officer on any matter which is referred by an ethical standards officer to the monitoring officer;
- (h) Determining any allegations of breach of the Members' Code of Conduct referred to the monitoring officer by an Ethical Standards Officer of the Standards Board for England.
- (i) To provide high level oversight of the following :
  - internal and external audit.
  - the whistle-blowing policy.
  - Complaints and ombudsman cases.
  - the authority's constitution.

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**MINUTES OF THE STANDARDS COMMITTEE**  
**25 March 2002**

Councillors: \*Robertson (Chair), \*Featherstone, \*Haley, Knight, MacDougall, \*Reynolds and \*Rice. \*Mr R. Celaire, Ms I. Francis, \*Mr R. Lovegrove and \*Mr N. Weber.

\*Members present.

**SC1. APPOINTMENT OF CHAIR:**

**RESOLVED:**

That Councillor Robertson be appointed Chair and Roger Lovegrove be appointed Deputy Chair.

(Councillor Rice requested that his dissent be recorded).

**SC2. APOLOGIES:** Apologies for absence were received from Councillor MacDougall and Ms Francis.

**SC3. MINUTES:**

**RESOLVED:**

That the minutes of the meeting held on 26 March 2001 be confirmed and signed.

**SC4. TERMS OF REFERENCE:** The Committee requested that a review of the terms of reference be undertaken in six months.

**RESOLVED:**

That the following terms of reference be approved and a review undertaken in six months time:

1. To advise the Council on the adoption of a local Code of Conduct for Members, to promote, develop and maintain high standards of conduct by the members and co-opted members of the authority, including:
  - providing and organising training of Councillors in ethical conduct
  - to be a source of advice and guidance to Members on matters of conduct
  - giving advice to individual Councillors on such issues as the treatment of personal interests including the declaration and registration of interests, and, generally, on matters of conduct.
2. To monitor and update the Code as necessary;
3. To be responsible for the implementation of the Code and providing or organising training for members on ethical conduct;
4. To consider a report of the Monitoring Officer on any matter referred to them by an Ethical Standards Officer of the Standards Board for England under Sections 60 or 64 of the Local Government Act 2000 and to report any relevant issues to the Council.
5. To respond to national reviews and consultations on standards related issues
6. To provide high level oversight of the following :
  - internal and external audit.
  - Complaints and ombudsman cases.
  - the authority's constitution.
  - the Council's Member/officer protocol.

**SC5. PROCEDURE FOR DEALING WITH COMPLAINTS OF MISCONDUCT** (Report of the Deputy Monitoring Officer – agenda item 6):

Clarification was sought as to whether the Council could overturn decisions of the Committee, with reference in particular to paragraph (d) of terms of reference and paragraph 2 of the report (sanctions). Officers were also requested to clarify whether complaints of misconduct would be held in public.

**RESOLVED:**

1. That subject to the following comments, the proposed procedures for dealing with complaints of misconduct, both prior and after the adoption of the Model Code of Conduct, be agreed:
  - i. That a time limit be applied to application of the procedures governing the period prior to adoption by the Council of the Model Code of Conduct.
  - ii. That any decision by the Monitoring Officer not to progress a complaint on the basis that it was vexatious or an abuse of the process be reported to the Committee.
  - iii. Deletion of the word “normally” in the first sentence of paragraph 5.2.
  - iv. Deletion of paragraph 5.10
  - v. Alternatives to an appeal to full Council to be investigated (paragraph 6.3) together with the form the appeal would take.
  - vi. To amend paragraph 2.1 replacing at the third bullet point “subject to the agreement of his/her group” with “subject to consultation with his/her group”.
2. That a copy of the regulations relating to exempt and confidential issues be sent to the Independent Members.

**SC6. IMPLEMENTING NEW ETHICAL GOVERNANCE ARRANGEMENTS** (Report of the Deputy Monitoring Officer – agenda item 7):

**RECOMMENDED:**

1. That the terms of reference be agreed, as above.
2. That the new model Code of Conduct (attached as Appendix 1), as amended by (3) below, be adopted.
3. That a local addition to the Code be added, requiring Members to provide the Monitoring Officer with details of any complaints made to the Standards Board.

**RESOLVED:**

1. That approval be given to the form of written undertaking that Members and Co-opted Members will be asked to sign following adoption of the Code by the Council.

**SC7. MONITORING OFFICER PROTOCOL** (Report of the Deputy Monitoring Officer – agenda item 8):

**RESOLVED:**

That the protocol be adopted and incorporated into the Council’s Constitution, subject to the Deputy Monitoring Officer confirming that there is no potential conflict at paragraph 2(e) below:

*The Monitoring Officer will have a special relationship with the Chair of the Council, Chair of the Standards and Overview and Scrutiny Committees and will ensure the Head of Paid Service and Chief Financial Officer have up to date information regarding emerging issues.*

**SC8. PROPOSAL FOR A TRAINING PROGRAMME FOR MEMBERS AND CO-OPTED MEMBERS IN THE NEW ETHICAL GOVERNANCE ARRANGEMENTS** (Report of the Deputy Monitoring Officer – agenda item 9):

**RESOLVED:**

1. That the training programme as set out in the report be agreed.
2. That the Deputy Monitoring Officer be requested to check whether the provisions relating to hospitality and gifts applied to the Mayor.

**SC9. NATIONAL CONFERENCE ATTENDANCE:**

**RESOLVED:**

1. That the Deputy Monitoring Officer, Mr R Lovegrove and possibly one other, be requested to attend the Conference.
2. That the Deputy Monitoring Officer be requested to confirm that there was no legal barrier to existing Council members of the Standards Committee attending the Conference.

**IRENE ROBERTSON**  
Chair





## The Standards Committee of 18 June 2002

Report title: **Registration of Interests**

### 1. Purpose

**The purpose of this report is to update the Standards Committee on the present state of play regarding the registration of Members' Interests as required by Section 81 of the Local Government Act 2000 and the Haringey's Member's Code of Conduct**

### 2. Recommendations

**It is recommended that The Standards Committee**

- **Note this report**
- **Endorse the action proposed in it**

Report authorised by: **John Suddaby, Monitoring Officer**

Contact officer: J Suddaby – Deputy Borough Solicitor – Legal Services  
Telephone: 020-8489 3974

### 3. EXECUTIVE SUMMARY

Under the Local Government Act 2000 and the Code of Conduct, elected members ( including voting co-opted members) are required to register their interests within 28 days of their election to office and to inform the Monitoring Officer in writing of any changes to these interests within 28 days of becoming aware of this change. The Monitoring Officer is required to establish and maintain the register of interests and to provide it to be made accessible to members of the public

and to publicise this fact.

This report updates member of the Standards Committee of the progress made to date in complying with these requirements.

4. Access to information:

**Local Government (Access to Information) Act 1985**

Local Government Act 2002, Haringey's Members Code of Conduct..

**5. Background**

- 5.1 The Model Code of Conduct was adopted with minor amendment at the Council Meeting of 15 April 2002. Following their election on 2 May 2002 all Haringey Council Councillors were supplied with a questionnaire (Appendix A) relating to the registration of their interests as required by the adopted Code of Conduct. Members were asked to complete the questionnaire and return this to the Monitoring Officer by 30 May 2002.
- 5.2 Voting co-opted members were also sent a copy of the questionnaire and asked to complete it and return it.
- 5.3 On 11 June, the Monitoring wrote to members and co-opted members who had so far not returned their completed questionnaires enclosing a further copy and asking them to complete it. To date, the Monitoring Officer has not received completed questionnaires from the following members and co-opted members:
- Councillors: G.Bull, B. Haley, F. Knight, V. Manheim, B. Millar, J. Patel, E. Santry, T. Sulaiman.
- Co-opted Members: R. Celaire.
- 5.4 The Monitoring Officer proposes to write a further letter to the above members reminding them of their obligations under the Code of Conduct to register their interests. The Monitoring Office will also make it clear that he is ready to discuss with any member any particular difficulties they may be having with the completion of the questionnaire. Finally the Monitoring Officer will point out that a continued failure to supply him with details of their interests would without adequate excuse amount to a breach of the Code of Conduct.
- 5.5 The Monitoring Officer has supplied a briefing note to District Audit informing them of the steps taken in Haringey in implementing the Governments new ethical framework, including the registration of interests, and this note is reproduced for members of the Standards Committee and Appendix B.

## Appendix A

### **DISCLOSURE & REGISTRATION OF MEMBERS' INTERESTS UNDER THE LOCAL GOVERNMENT ACT 2000**

Haringey's Code of Conduct for members, adopted on April 15 2002 requires **members to register their financial and other interests in the maintained register within 28 days of the adoption of the Code of Conduct or of their election or appointment to office whichever is the later.**

Accordingly, please complete the attached questionnaire, which will provide the monitoring officer with your written notification of your financial and other interests. Please refer to Haringey's Code of Conduct in completing the questionnaire.

The *Local Government Act 2000 (LGA)*, requires the monitoring officer of the Council to establish and maintain a register of interests of members and co-opted members of the Council (section 81(1)) and this will be composed of information you give in answer to the questionnaire. The register has to be open to the public at an office of the Council at all reasonable hours and arrangements are in place to comply with this.

**Please return your completed questionnaire, signed and dated to the Monitoring Officer at Level 8, Alexandra House, 10 Station Road, N22 7TR :**

- In the case of Councillors elected on 2 May 2002 who were elected Members when the code was adopted on 15 April 2002, you must return your completed questionnaire by **Monday 13 May 2002.**
- In the case of Councillors who were elected on 2 May 2002 who were not elected Members when the Code was adopted on 15 April 2002, you must return your completed questionnaire by **Monday 30 May 2002.**

**\*\*\* IMPORTANT:-** Please note, should there be any change to the interests specified by you in your completed questionnaire, you must give the monitoring officer written notification of that change, within 28 days of you first becoming aware of the change.

The questionnaire and above notification will also be e-mailed to all Members who will have an option to provide their responses electronically.



**REGISTRATION OF MEMBERS' INTERESTS  
QUESTIONNAIRE**

**Name** .....

**Ward** .....

**A Financial Interests**

Please provide full details of the following:-

**1. Any employment or business currently being carried on by you.**

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**2. The name of the person who employs or has appointed you, the name of any firm in which you are a partner, and the name of any company for which you are a remunerated director.**

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**3. The name of any person, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties ( a "relevant authority" includes a local authority, the GLA, a police authority, and a fire authority).**

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**4. The name of any corporate body which has a place of business or land in the area of the London Borough of Haringey and in which you have 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 (nominal value = value as indicated on the share certificates).**

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**5. A description of any contract for goods, services or works made between you and Haringey Council or between the Council and a firm in which you are a partner, a company of which you are a remunerated director, or a corporate body as specified in question 4 above.**

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**6. The address or other description (sufficient to identify the location) of any land in which you have a beneficial interest and which is in the area of Haringey ( a beneficial interest would include a freehold or leasehold interest, whether it be a joint or a sole interest).**

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**7. The address or other description (sufficient to identify the location) of any land where Haringey is the landlord and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a corporate body as specified in question 4 above.**

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**8. The address or other description (sufficient to identify the location) of any land in Haringey's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer.**

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**B Other Interests**

Please provide details of any membership of or position of general control or management of the following:-

**1. Any body to which you have been appointed or nominated by Haringey Council as its representative.**

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**2. Any public authority or body exercising functions of a public nature.**

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**3. Any company, industrial and provident society, charity, or body directed to charitable purposes.**

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**4. Any body whose principal purposes include the influence of public opinion or policy.**

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**5. Any trade union or professional association.**

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**Signed .....**

*Thank you for your co-operation.*

## Appendix B

For the Attention of Debbie Hanson

Debbie,

Here is an update for your information on actions taken in Haringey regarding the implementation of the new ethical framework ("NEF") and Model Code of Conduct.

### **Adoption of Code**

As you probably know this was adopted by the Council at its meeting on 15 April 2002 with one small addition - requiring a Member to notify the Monitoring Officer as soon as practicable after making a complaint to the Standards Board about the conduct of another Member. You should have a copy of the Haringey version of the Code. If you don't please let me know.

All elected Members agreed to abide by the Code as part of their declaration of acceptance of office on 2 May 2002.

The availability of the Code of Conduct for inspection by members of the public was advertised in the Hornsey Journal on 9 May 2002 and arrangements were made for a similar advertisement to be placed in the June edition of the Haringey People. Unfortunately this did not appear in that edition and will be placed in the July edition.

### **Standards Committee**

Following advertisements in the local press for Independent Members, appointment interviews were held in the latter part of last year ending January 2002. Interviews were conducted by an appointments panel drawn from the existing Members on the Standards Committee. Four appointments were made and ratified at the Council Meeting of 18 February 2002. The four independent members are: Mr Ronnie Celaire, Ms Irene Francis, Mr Roger Lovegrove and Mr Nicholas Weber.

Two meetings were held of the newly constituted Standards Committee in March 2002. The first meeting received a briefing on the new ethical framework and Model Code of Conduct and that the second meeting held on 25 March 2002 received reports on i) proposals for the training of Members in the Code and NEF, ii) the adoption of the Code with any local amendments by the Council and iii) to confirm the terms of reference for the Committee, a protocol for the Monitoring Officer and a set of procedures for the hearing of complaints of breaches of the code against Members ( both for breaches of the old Local Government Code and any breaches of the new Model Code that are passed down to the Standards Committee by an Ethical Standards Officer).

I attach an agenda for the first meeting of the Standards Committee under the new administration which will take place on 18 June.

### **Training on the Code and NEF**

Four briefing sessions have been delivered for Members by the Monitoring Officer covering the main constituents of the Code and NEF since March 2002. The last session was held on 28 May 2002, and was attended by over 20 Councillors most of them newly elected Members.

A briefing on on the Code and NEF was also given to Senior Officers of the Council by the Monitoring Officer on 12 March 2002.

A second stage training is to take place which will report on recent developments including the Government's consultative document entitled "Conduct of Councillors Local Investigation and Determination of Misconduct Allegations" and will also include group working through of scenarios relating to potential breaches of the Code and personal and prejudicial interests. This is planned to take place on 10 July 2002 with the possibility of a repeat session depending on attendance.

#### Standards Board Conference

The Monitoring Officer and an Independent Member attended this conference which was held in Birmingham on 20 May 2002 and a report on it will be discussed at the next Standards Committee meeting.

#### Complaints against Members

Two formal complaints against Members are outstanding. These complaints were made before the adoption of the new Model code and are allegations of breaches of the old Local Government Code of Conduct. A report on the progress made in relation to these complaints will be given to the forthcoming meeting of the Standards Committee.

I am attaching a copy of the agenda for the next meeting of the Standards Committee.

I hope this information is helpful. Please let me know if there is any further information you require.

Regards

John

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## 1<sup>st</sup> Annual Assembly of Standards Committees (Birmingham, 20 May 2002) –Report back

### 1. INTRODUCTION

Approximately 900 delegates attended the Conference, organised by the Standards Board for England (SBE). Haringey was represented by John Suddaby and myself.

The day consisted of common sessions plus one period of eight concurrent workshops. John and I attended different workshops, so his perspective might consequently differ from mine.

### 2. MAJOR ISSUES

#### Delegation of complaints from SBE

This seemed to be *the* major concern: that SBE will keep too many complaints to itself and not delegate enough down to the local Standards Committees. As a consequence:

- a) Local Standards Committees could become “window dressing”, with no real powers;
- b) Independent members would not feel that they were making a difference, or that their role was worthwhile.

SBE made no promises on this matter. Their reply was that a centralised system of complaints-handling was necessary to ensure uniformity of approach.

It was reported that the Minister had promised SBE that if it needed more funds in order to carry out its work then more funds will be made available. In my view, this could act as a positive incentive for SBE to keep as many complaints as possible to itself, so as to maximise the case for the promised additional resources.

This will probably be a matter of learning from experience, so it may be too early to form a judgement now. It is, however, something that we should perhaps keep an eye on for ourselves. For example, I note that the section of SBE’s website containing details of the complaints procedure makes no mention of local Standards Committees.

#### Disciplinary Powers

Within my workshop, widespread disquiet was expressed by delegates at the thought of an unelected Standards Committee being able to prevent democratically mandated Members from carrying out their duties.

It was accepted that there might be extreme cases where a Standards Committee might need to take such action as a matter of emergency without waiting for an election to test the electorate’s opinion. Nonetheless, the general view was that as a matter of principle the only disciplinary action that a Standards Committee could reasonably take would normally be that of public censure.

If we decide to follow this line, then we might want to consider having various levels of censure, eg. ranging from ‘rebuke’ to ‘severe censure’, rather than having simply one type of censure for all degrees of ‘offence’.

### **Independence of Chairs**

There was lengthy debate in my workshop about whether or not Standards Committees should be Chaired by independent members.

There were split views on this, and a show of hands was asked for. No count was taken, but from where I was seated it seemed that approximately 60% thought the Chair should be independent, 30% thought the Chair should be one of the elected Members, the rest having no strong view.

### **Granting of dispensation**

Concern was expressed at the mechanism by which local Standards Committees grant dispensation to elected Members.

The circumstances under which dispensation could be granted are so tightly proscribed that this problem will rarely arise. However, when it does arise the immediate nature of the problem could necessitate the calling of a meeting of the Standards Committee at an hour or two's notice. There is clearly a practical difficulty here which will need to be addressed in advance at local level.

SBE gave no positive response, other than thanking the delegate for having raised the point.

### **Consultation**

SBE chose the Assembly as the launching point of a Consultation Paper, which is included as a separate Agenda Item.

**Roger Lovegrove**  
**6 June 2002**



## The Standards Committee of 18 June 2002

Report title: **Local Investigation and Determination of Misconduct Allegations - Draft Response to DTLR Consultation Paper**

### 1. Purpose

**The purpose of this report is to provide a draft response to the DTLR Consultation to members of the Standards Committee for the Committee's consideration.**

### 2. Recommendations

**It is recommended that The Standards Committee**

- **Consider amendments to the draft response**
- **Endorse the final response for transmission to the DTLR**

Report authorised by: **John Suddaby, Monitoring Officer**

Contact officer: J Suddaby – Deputy Borough Solicitor – Legal Services  
Telephone: 020-8489 3974

### 3. EXECUTIVE SUMMARY

This Item relates to the consultation paper issued by the DTLR, in May 2002 containing proposals to enable standards committees and monitoring officers to conduct investigations and adjudicate on complaints made under the Code of Conduct which are referred back to the authority by an Ethical Standards Officer.

### 4. Access to information:

**Local Government (Access to Information) Act 1985**  
Local Government Act 2000 and Model Code of Conduct.

## 5. Background

- 5.1 The DTLR issued their consultative paper in May 2002 and the Council has until 1 July to comment on its proposals, which include giving the Standards Committee new powers to adjudicate on complaints of breaches of the Haringey Code of Conduct that are referred back to them by an Ethical Standards Officer.
- 5.2 The consultative paper also proposes that where following this process a complaint is upheld, the Standards Committee should have the power to censure the member, or to remove them from any office, position or committee of the Council, or to suspend or partially suspend them for a period of up to 6 months or suspend them for a conditional period or require the member to make a public apology.

## DRAFT

### Conduct of Councillors – Local Investigation and Determination of Misconduct Allegations: Response to DTLR Consultation Paper of May 2002

By

London Borough of Haringey Council

(As approved by the Council's Standards Committee on June 2002)

The Council's response to the consultation paper is set out below. Comment is made under each relevant paragraph number in the consultation paper. A response to the specific questions posed in the consultation paper is given at the end of the document.

#### The Governments proposals for a Local Determination Framework

##### Paragraph 4

*The Council agrees with the five principles which it is proposed should underpin any system of investigation.*

#### Section 1 – Proposed Framework: how it could work

##### Paragraphs 13 – 15

The Council notes that the proposals will require the Standards Board to produce guidance on the balance to be struck between the need to inform the subject of an allegation of the complaint as soon as possible and the need to ensure that investigations are not prejudiced by premature disclosure.

*The Monitoring Officer should not be directed not to investigate an allegation as is proposed at **paragraph 13**.*

Where a formal allegation is made to the Council as opposed to the Standards Board then the need to immediately pass this on to the Standards Board is recognised. This should not preclude the Monitoring Officer investigating the facts surrounding a complaint in certain circumstances. The most obvious of these will be where the alleged misconduct has potentially serious repercussions for the authority, for example regarding the legality of a contract or of a planning decision. In this situation, such investigation should be allowed as is necessary to protect the Council's corporate interest.

*Subject to the guidance that comes from the Standards Board, the requirement that the monitoring officer "should not attempt to recommend to*

*the subject of an allegation that he or she should take any steps to apologise or make amends" is an unnecessary restriction and should be removed.*

Such approaches and suggestions are part of the monitoring officer's role:

- They do not of necessity require the carrying out of a parallel investigation by the monitoring officer.
- They may constitute important mitigation for the member complained against
- They need not prejudice the subsequent involvement of the monitoring officer in investigating the complaint.

### **Step 3: Investigation**

When conducting inquiries referred to him/her by an ESO, Paragraph 23 recognises that monitoring officers will need powers to:

- Arrange for any person to assist him, or her, in the investigation.

As presently formulated, this would not amount to giving the monitoring officer the power to delegate their investigative function to their deputy or another suitably qualified person. There may be circumstances where this ability to delegate to another the investigation of an allegation would be important:

- Where the monitoring officer feels that his/her involvement in giving advice to the complainant at paragraph 11 has prejudiced his/her role as investigator.
- Where the number of complaints referred back to the monitoring officer and the increased responsibilities under the Local Government Act 2000 make this necessary.

*The Council proposes that the regulations should remove the restrictive provisions of Section 5 of the Local Government and Housing Act 1989 which make the discharge of the monitoring officer's duties a personal function and that the discretion given to the monitoring officer to delegate should include delegation to outside resources including monitoring officers of other authorities.*

### **Paragraph 24**

This paragraph accepts that in carrying out an investigation, the monitoring officer will need powers to make inquiries of any person he/she thinks necessary but does not propose giving monitoring officers the means to enforce these powers. This may present significant practical difficulties for the monitoring officer being able to complete his/her investigative role.

*The Council proposes that the national Model Code of Conduct for councillors should be amended to include a requirement to co-operate with the monitoring officer's investigations.*

## Paragraphs 26 and 27

The Regulations should not require or suggest that the adjudication stage should always involve the calling of witnesses and the hearing of evidence or that proceedings should be carried out in an adversarial rather than an inquisitorial manner. In many cases, it may be possible for decisions to be made by the standards committee on the basis of documentation providing the respondent member has had an opportunity to comment on the documents.

It may be, however, that by the very nature of things, proceedings will take an adversarial form although much will depend on the standards committee and the procedures it adopts.

Paragraphs 26 and 27 bear on the nature of the adjudication stage of a complaint and the role of the monitoring officer in this.

*The Council does not agree that the conclusions which the monitoring officer is entitled to present to the standards committee should be restricted in the way outlined at Paragraph 26:*

- These are not the only conclusions possible at the end of an investigation and forcing the monitoring officer to adopt one or other may prejudice the fairness of any subsequent hearing.
- Such a restriction will fix the monitoring officer in the role of prosecutor and reinforce the tendency for hearings to become adversarial in nature.

*The Council proposes that the monitoring officer should be entitled to reach one of three conclusions as a result of his/her investigation:*

- a) *that there is no evidence insufficient evidence of any failure to comply with the code of conduct; or*
- b) *that there is sufficient evidence of a breach of the code to require the complaint to be considered by the standards committee*
- c) *that on the balance of probabilities the code of conduct has been breached*

The Council accepts that this could lead to different approaches being taken by monitoring officers and standards committees in the presentation and adjudication of complaints and that there may be a tendency for monitoring officers to opt for b) and thereby retain a more neutral role in the process. The Council does not, however, think that the drive for uniformity should restrict the monitoring officer to the two choices presently contained at paragraph 26.

*It is further proposed that the monitoring officer or standards committee should have the discretion to refer a complaint back to the ESO where on further investigation the breach is discovered to be more serious than was seen to be the case when it was referred to the monitoring officer.*

## **The Role of the Standards Committee**

### **Paragraph 29**

*The Council considers that restricting to five the number of standards committee members considering a report from an ESO is sensible providing this is a maximum but not a minimum figure.*

*The Council agrees with the proposal that the chair of the sub-committee elected to consider a report from an ESO should be an independent member but does not agree that the chair of the sub-committee should select its membership.*

*The Council proposes that the standards committee should have the role of deciding the membership of any sub-committee as in the normal way of appointing sub-committees and of agreeing who the independent member chair will be as would be the normal procedure..*

*There is some doubt that standards committees have the power to delegate to sub-committees at all, being creations of the Local Government Act 2000 and not of the Local Government Act 1972. If it is proposed to legislate to confirm such a power, the Council asks that this be done in such a way as to enable the standards committee to delegate to a sub-committee the giving of dispensations under the recently published Regulations.*

### **Paragraph 30**

*The Council welcomes the proposal for the standards committee to be free to decide their own practice and procedures, subject to any guidance issued by the Board.*

### **Paragraph 31**

For the proposal to give the power to remove a member "from any office, position or committee of the Council" to be effective, it needs to take account of the fact that this appointment in most cases has been by full Council. It also needs to address the implications of such removal for the payment of allowances which are themselves determined by full Council.

### **Step 5: Appeal**

*The Regulations will need to clarify the basis of the appeal process whether it is a full re-hearing or something falling short of this – i.e. a review process.*

If it is the former, it is not clear whether the delegation to standards committees envisaged by the Consultation Document will fulfil the function of allowing local determination of the less serious cases in order to free up the national resources for the more serious allegations.

If it is the latter, then presumably in order to make the procedure comply with the Human Rights Act and the principles of natural justice there will have to be a much greater procedural prescription and uniformity at local standards committee level than is presently envisaged.

### **Role of Standards Committees**

Any regulations must clarify the various routes that can be taken by a complainant in making a complaint and the corresponding responsibilities that the monitoring officer, individual council members and members of the standards committee have. At present the Consultative Document does not fully do this.

### **Paragraphs 12 and 13**

These suggest that the monitoring officer's role is limited to giving such advice as an individual member needs in order to decide whether to make a complaint. This is consistent with the member's individual duty under paragraph 7 of the Code of Conduct.

*Regulations should clarify what duty the monitoring officer has to refer allegations to either the Standards Board or standards committee where a member decides not to make an individual complaint, and where the monitoring officer identifies a potential breach of the Code.*

The proposal that any formal allegations received by a relevant authority should be referred to the standards committee may be a practical way of ensuring that allegations are vetted to exclude the vexatious or frivolous. It does not, however, address whether members should be advised to send in any complaints to the standards committee for them to vet and decide whether to process and whether in that circumstance the member will have discharged their duty under paragraph 7 of the Code.

### **Costs**

#### **Paragraph 53**

The Council considers that the implementation of the new ethical framework and the present proposals to extend the power of the standards committees will in some cases provoke highly contentious hearings. The proposal to allow respondent members to be represented at standards committee level by a lawyer is a tacit recognition of this.

*In this context, a power for the local authority to award costs in certain circumstances – perhaps on direction by the adjudication panel following an appeal – should realistically be provided for.*





**CONDUCT OF COUNCILLORS**

**LOCAL INVESTIGATION AND DETERMINATION  
OF MISCONDUCT ALLEGATIONS**

**A CONSULTATION PAPER**

## **Background**

The Local Government Act 2000 introduced a new ethical framework for local government. Under the new ethical framework, all relevant authorities are required to adopt codes of conduct. These set out standards of conduct which elected and co-opted members of the authority are expected to observe.

Any person who believes that a member has failed to comply with an authority's code of conduct can make a written complaint to a new independent body, the Standards Board for England, who will investigate the allegations. Ultimately, if a complaint proves to be well founded, a member who has breached a code of conduct may be suspended from the authority, or even disqualified from holding public office for up to five years.

### Dealing with Complaints

When the Standards Board for England receive a complaint which they consider should be investigated, they will pass the matter to an Ethical Standards Officer (ESO). ESOs are employees of the Board whose functions and powers are derived directly from statute, instead of from the Board. Thus, in the matter of investigations they are operationally independently of the Board and Government.

An ESO will investigate a complaint with a view to deciding whether there has been a breach of a code of conduct. Having concluded an investigation an ESO may reach one of four findings:

- that there is no evidence of any failure to comply with a code of conduct ;
- that no action needs to be taken in respect of the matter under investigation;
- that the matters under investigation should be referred to the monitoring officer of the relevant authority;
- that the matters under investigation should be referred to the Adjudication Panel for adjudication by tribunal.

An ESO may also, before completing an investigation, decide not to proceed with the investigation, but instead, to refer the matters to the monitoring officer of the relevant authority.

Section 66 of the above Act permits the Secretary of State to make regulations in connection with the way in which monitoring officers should deal with any matter referred to them by an ESO. In addition, Section 54(4) of the Act permits the Secretary of State to make regulations with respect to the exercise of functions by standards committees, and Section 57 (3) permits the Secretary of State to make orders conferring functions on the Standards Board. The Government proposes to make regulations and an order under these powers to implement the framework described in this consultation paper.

### **About this consultation exercise**

The Local Government Act 2000 introduced a new ethical framework for local government. The framework is intended to support high standards of conduct in local government, and to strengthen the bond of trust between councils and local communities.

The Act provides for the Standards Board for England to investigate allegations that codes of conduct have been breached by members of relevant authorities in England.

In certain circumstances, Ethical Standards Officers (ESOs) at the Standards Board can choose to refer matters that have been, or are, the subject of investigation to the monitoring officer of the relevant local authority.

Having taken the advice of the Standards Board for England, the Government sets out proposals in this paper for the framework within which allegations referred by ESOs to local authorities could be investigated and determined.

Copies of the consultation paper are being sent to all principal local authorities; fire, national parks and other joint bodies; parish and town councils in England; to all police authorities in England and Wales; and to the various organisations that represent relevant authorities. Copies are also being sent to a range of bodies, including academic institutions, which have an interest in the issues. A list of the bodies to whom this paper has been sent is at **annex A**.

Responses to the questions raised in the paper and on the proposed approach to drafting the regulations are sought by **1 July 2002**. Responses should be clearly marked as such and sent to:

Alison Morris  
Democracy and Local Leadership Division  
Zone 5/A1  
Eland House  
Bressenden Place  
London SW1E 5DE

Fax: 020 7944 4109  
e-mail: [LGID@dtlr.gsi.gov.uk](mailto:LGID@dtlr.gsi.gov.uk)

Any questions or comments about this consultation exercise should be sent to

Paul J Downie  
Democracy and Local Leadership Division  
Zone 5/A1  
Eland House  
Bressenden Place  
London SW1E 5DE

Fax: 020 7944 4109  
e-mail: [paul.downie@dtlr.gsi.gov.uk](mailto:paul.downie@dtlr.gsi.gov.uk)

In due course, the Department may wish to publish responses to this consultation exercise or deposit them in the Department's library. Unless, therefore, a respondent specifically asks that a response be treated as confidential, it may be published, or otherwise made public. Confidential responses will be included in any statistical summary of the numbers of comments received and views expressed.

## The Government's proposals for a Local Determination Framework

### Principles

1. In the Government's view the investigation and determination of allegations of misconduct – whether at national or local level – must be seen as part of an integrated process. The way in which monitoring officers should deal at local level with referrals from ESOs cannot be divorced from the procedures that the Standards Board and ESOs will adopt in investigating complaints. In drawing up these proposals, therefore, the Government have drawn on the advice of the Standards Board for England.
2. It is important that the procedures for handling cases at local level should support the Government's broad aims for the modernisation of local government. Openness and accountability are essential, and the procedures should encourage participation in local democracy both by demonstrating the high standards of conduct of those who hold office, and by providing fair and efficient processes for dealing with allegations.
3. The Government recognise that handling allegations of misconduct locally can present difficulties for councils. Local circumstances, including the political balance of the authority, can create pressures on standards committees and on monitoring officers when investigating cases and considering sanctions. The new framework established by the Local Government Act 2000, with the creation of the Standards Board, will help significantly, by allowing the more serious cases to be handled by an independent national body. It is important that the framework should also include clear, robust and workable procedures for handling the less serious cases.
4. The proposals themselves are based on the following five principles, which the Government believe should underpin any system of investigation and adjudication.

### The Principles

Box 1

- ***The preservation of public trust in the new ethical framework***
- Any system must preserve the faith of the public in the ability of the new ethical framework to deal with cases of misconduct. Allegations must be seen to be properly investigated, whether at local or national level.
- ***The avoidance of duplication***
- Both for the maintenance of the integrity of the system and to minimise the cost on the public purse, it is important wherever possible to avoid duplication of effort at local and national level.

- ***The rights of individuals against whom complaints are made***
- An individual against whom a complaint is made should have the right to answer any allegations and, if found to have breached a code of conduct, should have the ability to dispute both the finding and any sanction imposed.
- ***Appropriate and proportionate sanctions***
- Any sanction imposed against a member should be proportionate to the nature of the offence.
- ***A recognition of the different circumstances in which referrals are made***
- The system must recognise and respond to the fact that referrals from ESO's will be made in one of two different circumstances. Either, where an ESO has completed an investigation and believes that there has been a breach of a code of conduct; or prior to the completion of an investigation.

## **Section 1 - Proposed Framework: how it could work**

5. In order to understand how the Government's proposals might work, and to highlight the issues on which the views of consultees would be helpful, the following paragraphs outline how in practice cases might be handled. This is, of course, only an illustration: there will be many different circumstances leading to and surrounding alleged breaches of Codes of Conduct which may not be covered by the situations described here.

### **Step 1: a Councillor, Officer or member of the public thinks there may be reason to believe that another Councillor has breached the Code of Conduct**

6. There is a range of possible actions that might be taken by a person who believes that a breach may have occurred. He or she may make a complaint directly to the Standards Board, or to the relevant local authority; alternatively, he or she might first seek advice, again either from the Standards Board or from the local authority.
7. It may be that there is fairly clear evidence at this stage of a potential breach. But in many cases the picture will not be clear and could include evidence of maladministration, or other grounds for a complaint. The person considering making a complaint may not be fully aware of the details of the Code, or the process for making a complaint, or indeed any of the other procedures for registering dissatisfaction with Councillors or Councils.
8. Keeping in mind the *principles* outlined above, the objective at this stage should be to guide the person considering making a complaint to do so in the most appropriate way, providing reassurance that issues will be properly investigated while avoiding unnecessary duplication.

9. If an allegation with clear evidence is made to the Standards Board, the Board will notify the monitoring officer of the relevant council that an allegation has been made. The Standards Board will decide if a case should be investigated. If the Standards Board decide it should be investigated, the case will be referred to an Ethical Standards Officer, who may conduct the investigation or refer the case back to the monitoring officer of the relevant authority.
10. If an allegation with clear evidence is made to a local authority, then it should be referred to the Standards Board who will decide whether to investigate the case or to refer it back to the local authority. By giving the Standards Board the central role in deciding how allegations are handled, it will be possible to establish consistency in the treatment of allegations.
11. If the evidence is unclear, or if the person considering an allegation is seeking initial advice, or if the issue at the heart of the allegation appears to touch on more than simply a breach of the Code of Conduct, then it is important that sound advice is provided to the potential complainer on how to proceed. If the first approach has been made to the Standards Board then they will be able to provide this advice. If the approach is first made to the Council, then the monitoring officer should be able to offer advice.
12. The monitoring officer should be able to provide sound advice on the scope of an authority's Code of Conduct, allowing potential complainers to judge for themselves whether a breach may have occurred. The monitoring officer should also be able to advise on the process for handling allegations of potential breaches. In addition, monitoring officers should be able to advise on the range of other sources of redress, including the Council's own complaints procedure and the role of the Local Government Ombudsman.
13. At this stage the monitoring officer should not take on the task of investigating an allegation. The aim is to make sure that a potential complainer is fully informed of the avenues open (and in the case of Councillors, of the obligations placed upon them by the Code) before deciding whether to proceed with an allegation or complaint.
14. There may be cases in which a Councillor has behaved in a way that breaches the code of conduct, but recognises that and wishes to make amends – for example by apologising to an offended party. In principle, early actions to put right any offence should be encouraged. However, the monitoring officer should not seek to short-circuit the proper process of investigation and so should not attempt to recommend to the subject of an allegation that he or she should take any steps to apologise or make amends. Where a Councillor who has breached the code does take such steps voluntarily, this can be taken into account when the allegation is formally investigated.
15. The Councillor who is the subject of an allegation may not be aware that an allegation has been made. Fairness demands that he or she should be told quickly of any allegations: and indeed, this may prompt an early apology. However, there could also be cases where notifying the subject of the allegation could hamper the investigation – for example by leading to the destruction of evidence. There is a balance to be struck, therefore,

in giving duties to the monitoring officer in connection with informing Councillors that allegations have been made against them. Rather than attempt to define a single approach in regulations, the Government proposes to require the Standards Board to produce guidance in this matter.

16. The conclusion of *Step 1* should be either that a formal allegation is made that the Code has been breached, or that the person considering making such a complaint decides to seek redress through a more appropriate route, or to drop the matter entirely. A formal allegation relating to the Code could also be made alongside a complaint through another process.
17. The allegation could be made to the Standards Board, or to the relevant local authority. As noted above, allegations made to a local authority should be referred to the Standards Board, in order to establish a common, unified framework for investigations. The Government intends to make regulations providing for all complaints relating to Codes of Conduct, which are received by a local authority to be referred to the authority's standards committee. The standards committee should have the duty of referring these complaints to the Standards Board.

**Step 2: After a formal allegation has been made that the Code has been breached**

18. The process described under *Step 1* above should mean that all allegations of breaches of the Code are either made directly to the Standards Board or are referred to the Standards Board by local standards committees. The Standards Board will at that stage consider whether the case should be investigated.
19. If the Standards Board decide that a case should not be investigated, the Board will explain their decision to the person making the allegation, and will notify the monitoring officer of the relevant authority.
20. If the decision is made that the case should be investigated, it will then be referred to an Ethical Standards Officer (ESO). The ESO will be able to come to one of the following findings:
  - a) that there is no evidence of any failure to comply with the code of conduct;
  - b) that no action needs to be taken;
  - c) that the case should be referred to the monitoring officer of the relevant authority; or
  - d) that the case should be referred to the Adjudication Panel.
21. Referral to the monitoring officer of the relevant authority ((c) above) may also take place before detailed investigations have been completed. *Step 3* below describes the process to be followed if further investigations are needed. If, however, investigations have been completed by the ESO before referral then a report will have been prepared and it will be for the local standards committee to consider that report and to determine the outcome. This process is described in *Step 4*.



**Step 3: Investigation**

22. Cases may be referred by the Ethical Standards Officer to the Monitoring Officer of the relevant authority before investigations have been completed. It will then be for the Monitoring Officer to conduct investigations.
23. In order to conduct inquiries, monitoring officers will need powers to:
- arrange for any person to assist him, or her, in the investigation
  - make inquiries of any person he or she thinks necessary
  - obtain advice from any person who (s)he believes is qualified to provide it and to pay that person any fee or allowance that (s)he sees fit.
24. These powers are less extensive than those available to ESOs, who can compel any person to provide them with information, documentation or explanation under threat of criminal conviction. The Government does not believe that monitoring officers should have similar powers available to them. While regulations could be made which would allow monitoring officers to compel information to be provided, it would be inappropriate to use secondary legislation to provide for criminal sanctions. Without such sanctions, the power to compel information, documentation or explanation would be worthless.
25. The Government does not intend to regulate the procedures that monitoring officers should follow when conducting investigations. The process of investigation will be for monitoring officers to determine, having regard to the circumstances of the case and the requirement to ensure fair process. However, in order to ensure that members are permitted an opportunity to answer any allegations of misconduct, we propose that the regulations should require a monitoring officer to give an individual who is subject to investigation an opportunity to comment upon the allegations before the monitoring officer finalises his, or her report.
26. The Government intend that the regulations should require a monitoring officer to reach one of two conclusions as a result of his, or her, investigation, namely:
- a) that there is no evidence of any failure to comply with the code of conduct; or
  - b) that the code of conduct has been breached.
27. When the investigation has been concluded, the monitoring officer should prepare a report for the standards committee.

**Step 4: Determination of the allegation**

28. Some cases will be referred back to local authorities by the Standards Board after the Ethical Standards Officer has completed a report; other cases will need to be investigated locally by the Monitoring Officer. In either case, it will be for the standards committee to consider the report and to determine what action should be taken.
29. The Government proposes that standards committees should have a duty to consider all reports referred to it by ESOs or by monitoring officers. When considering such reports, it would not be appropriate to have a large number of members present: this could both be intimidating and could add to the risks of party political influence. The Government proposes that standards committees when considering report should normally include no more than five members and should be chaired by an independent member who would be responsible for selecting the other members. When a district council standards committee is considering a case involving a parish councillor, the committee should include at least one member from a parish council.
30. Standards committees will be free to decide their own practice and procedures, subject to any guidance issued by the Standards Board.
31. The standards committee should have the power, after considering reports and representations, to reach one of the following conclusions:
- a) That there is no evidence of any failure to comply with the Code;
  - b) That a member has failed to comply with the Code, but that no action needs to be taken;
  - c) That a member has failed to comply with the Code and should be:
    - Censured, or
    - Removed from any office, position or committee of the Council; or
    - Suspended or partially suspended for a period of up to 6 months; or
    - Suspended for a conditional period (e.g. until making an apology or undertaking training); or
    - Required to make a public apology.

(It should also be possible to 'suspend' sanctions so that they only come into effect in the event of further misconduct.)

32. Following the decision, standards committees should be required to publish their findings (or a summary) – except where the finding is that no breach has occurred, in which case the standards committee should have the discretion to publish or not.

### **Step 5: Appeal**

33. If a standards committee decides that there has been a breach of the Code, it will be possible for the Member concerned to appeal against the decision. Appeals will be heard by an appeals tribunal drawn from the Adjudication Panel.
34. The appeals tribunal will consist of at least three members of the Adjudication Panel, appointed by the President of the Adjudication Panel. The tribunal will be able to:
- a) Uphold the decision of the standards committee that the Code has been breached; and either:
    - Endorse the penalty imposed; or
    - Impose a different penalty. Or
  - b) Overturn the decision of the standards committee.

## **Section 2 - Roles, Responsibilities and Regulations**

35. In order to put in place the procedures outlined above, it will be necessary to introduce regulations giving certain roles and responsibilities to the relevant parties. This section summarises those roles and responsibilities. (Note that in order to provide a comprehensive picture, some of the information from earlier sections is repeated here.)

### **Parish Councils**

36. Parish councils are, quite rightly, firmly included within the new ethical framework. At this, the most local tier of government, maintaining public confidence in high standards of conduct is no less important than at district or county level. However, the resources of parish councils in the great majority of cases are limited, and it would not be sensible to require each parish council to keep in place the machinery for investigating and determining allegations of misconduct. The Government therefore proposes that any cases relating to parish councillors which are referred for local determination should be handled by the monitoring officer and standards committee of the responsible district or county council. In hearing such cases, as noted above, standards committees should include parish council members.

### **Role of the Standards Board for England**

37. The Standards Board for England has been established in order to promote and maintain high standards of conduct by members of local authorities. It has a central role in the operation of the overall framework for promoting ethical behaviour and investigating allegations of breaches of codes of conduct.

38. The Government believes that the Standards Board should also have a significant role in the framework for local investigation and determination. This should contribute to the achievement of the *principles* outlined above, especially by contributing to public confidence in the overall framework and by helping to avoid duplication.
39. Under the Local Government Act 2000, the Standards Board has the power to refer to its Ethical Standards Officers any written allegations that are made to the Board. ESOs can also investigate other cases that come to their attention during the course of their investigations into cases that have been referred to them. In order to establish a framework which allows the Standards Board to decide which cases should be handled locally and which centrally, it is necessary to give the Standards Board additional powers to investigate cases which are *referred* to it by local standards committees.
40. The Government therefore proposes that the Standards Board should have the following role:
- All allegations of breaches of Codes of Conduct should be referred to the Standards Board. This will include referrals by local authorities of any potential breaches that come to their attention.
  - The Standards Board should have powers to investigate all allegations *referred* to it.
  - The Standards Board will decide which cases should be referred to local monitoring officers. Typically, this will be cases where the alleged breach of the Code is less serious: it will however be for the Standards Board to develop its policy in regard to which cases should be referred to local standards committees. Cases could be referred before any investigation has been carried out; after a partial investigation; or on completion of an investigation by an Ethical Standards Officer.
  - The Standards Board should be able to issue guidance to monitoring officers on how to handle cases referred to them.

*In order to give the Standards Board this role, it will be necessary to make orders under Sections 54(4) and 57(3) of the Local Government Act 2000 and regulations under Section 66.*

#### **Role of the Monitoring Officer**

41. Monitoring officers of local authorities will have a pivotal role to play in the proposed framework for local determination. This role will include providing good advice to Members, officers and the public on the operation of the Code and how alleged breaches should be investigated.
42. Monitoring Officers will need to be able to conduct investigations into some cases referred to local Standards Committees. They will therefore need powers to:
- arrange for any person to assist him, or her, in the investigation
  - make inquiries of any person he or she thinks necessary

- obtain advice from any person who he or she believes is qualified to provide it and to pay that person any fee or allowance that he or she sees fit.

*In order to give Monitoring Officers this role, it will be necessary to make regulations under Section 66.*

### **Role of the Standards Committee**

43. Standards committees have existed in some authorities for many years: under Section 53 of the Local Government Act 2000 each authority (except for parish councils) must establish a standards committee. The role of standards committees includes those functions set out in Section 54 of the Act, namely:

- (a) Promoting and maintaining high standards of conduct by the members and co-opted members of the authority;
- (b) Assisting members and co-opted members of the authority to observe the authority's code of conduct.
- (c) Advising the authority on the adoption or revision of a code of conduct;
- (d) Monitoring the operation of the authority's code of conduct;
- (e) Advising, training or arranging to train members or co-opted members of the authority on matters relating to the authority's code of conduct.

44. Standards committees are therefore at the heart of each local authority's efforts to promote ethical conduct. The Government intends to support that role, while at the same time ensuring that there is an integrated overall process for investigating allegations of breaches of the code.

45. The Government therefore proposes that standards committees should have the following role:

- Any formal allegations received by a relevant authority that a member may have failed to comply with the authority's code should be referred to the standards committee.
- The standards committee shall keep a register of complaints, and shall pass to the Standards Board for consideration all complaints as they are received. (Note that the Government does not intend that the standards committee should be referring to the Standards Board any or all casual remarks made, for example, in the heat of a Council debate. With the help of advice from the monitoring officer, it should be possible to make sure that any allegations made are done so on the basis of reasonable evidence, and with a good understanding on behalf of the person making the complaint of the terms of the Code of Conduct.)
- Any reports from ESOs referred for local determination (that is, cases which have been investigated by the Standards Board), and any reports prepared by monitoring officers following referral by the ESO, shall be considered by the standards committee.
- The standards committee should be free to decide its own practice and procedures, subject to any guidance issued by the Standards Board.

- The standards committee, after considering reports and representations, should have the power to determine:
- That there is no evidence of any failure to comply with the Code;
- That a member has failed to comply with the Code, but that no action needs to be taken;
- That a member has failed to comply with the Code and should be:
  - Censured, or
  - Removed from any office, position or committee of the Council; or
  - Suspended or partially suspended for a period of up to 6 months; or
  - Suspended for a conditional period (e.g. until making an apology or undertaking training); or
  - Required to make a public apology.
- (It should also be possible to 'suspend' sanctions so that they only come into effect in the event of further misconduct.)
- The standards committee should be required to produce a report on the outcome of each case it determines, send a copy of the report to the Board, and after the expiry of the appeals process (see below) this report should be published.

46. Standards committees when considering a report should normally include no more than five members and should be chaired by an independent member who would be responsible for selecting the other members. When a district council standards committee is considering a case involving a parish councillor, the committee should include at least one member from a parish council.

*In order to give Standards Committees these roles, it will be necessary to make regulations under Sections 54(4) and 66 of the Local Government Act 2000.*

### Appeals

47. The Government proposes that where a standards committee determines that a person has failed to comply with the Code of the relevant authority that person may appeal against the determination to an appeals tribunal drawn from the Adjudication Panel.
48. The appeals tribunal should consist of at least three members of the Adjudication Panel, appointed by the President of the Adjudication Panel.
49. The appeals tribunal should have the power to:
- Uphold the determination of the standards committee that the person investigated did breach the Code, and either:
    - Endorse any penalty imposed; or
    - Impose a different penalty. Or
  - Overturn the determination of the standards committee that the person investigated did breach the Code.

*In order to implement these procedures, it will be necessary to make regulations under Section 105 of the Local Government Act 2000.*

50. Where a case tribunal determines that a person has failed to comply with the code of the relevant authority, section 79(15) of the Act already provides for a right of appeal to the High Court.

### Representation

51. The Government propose that a person who makes oral representations to a standards committee, or who appeals to an appeals tribunal, may appear before the committee or tribunal in person, or may be represented by Counsel, or by a solicitor, or by any other person (at the expense of the respondent).

*In order to implement this provision, it will be necessary to make regulations under Section 66 of the Local Government Act 2000.*

52. Section 77(1) of the Act already provides that a person who is called to appear before a case tribunal may appear before the tribunal in person or may be represented by Counsel, solicitor or any other person.

### Costs

53. The Government proposes that standards committees should have no power to make an award of any costs or expenses arising from any of their proceedings. Tribunals should not normally make an order awarding costs or expenses, but may do so in exceptional circumstances such as the postponement of a hearing due to unreasonable conduct or if the pursuit of an appeal is judged to have been unreasonable. Section 77(6) of the Act contains powers enabling such provision.





### Section 3 - Questions

The Government would be interested to hear the views of consultees on all the issues raised in this paper, and in particular on the following questions:

#### General

1. Are the five principles set out in Box 1 the right ones?
2. Does the proposed framework fully support these five principles?
3. Is the overall balance right between the proposed roles of the Standards Board for England and local Standards Committees?

#### Detailed

4. Should all allegations of possible breaches of Codes be referred to the Standards Board?
5. Should the Standards Board have responsibility, as proposed, for deciding which allegations should be handled locally?
6. Are the powers proposed for monitoring officers necessary and sufficient?
7. Are the powers proposed for standards committees necessary and sufficient for them to fulfil their statutory functions?
8. Are the proposals on composition of standards committees' right?
9. Do the proposals on appeals, representation and costs fully support the five principles?

**Bodies consulted (In England only unless otherwise stated)**

County Councils

District Councils

London Borough Councils

Parish Councils

The Greater London Authority

The Metropolitan Police Authority

The London Fire & Emergency Planning Authority

Council of the City of London

Council of the Isles of Scilly

Fire Authorities

Police Authorities in England and Wales

Joint Authorities established under Part IV of the Local Government Act 1985

National Parks Authorities

The Broads Authority

The Local Government Association

The Audit Commission

The Commission for Local Administration

The National Association of Local Councils

The Association of National Parks Authorities

The Association for Larger Local Councils

The Association of Council Secretaries and Solicitors

The Society of Local Authority Chief Executives

INLOGOV

Improvement and Development Agency

Employers Organisation

## The Standards Committee of 18 June 2002

Report title: **Progress Report on Complaints outstanding against Members**

### 1. Purpose

**The purpose of this report is to update the Standards Committee on the present state of play of complaints outstanding against Members.**

### 2. Recommendations

**It is recommended that The Standards Committee**

- **Note this report**

Report authorised by: **John Suddaby, Monitoring Officer**

Contact officer: J Suddaby – Deputy Borough Solicitor – Legal Services  
Telephone: 020-8489 3974

### 3. EXECUTIVE SUMMARY

This Item relates to two separate complaints received against two elected members in February of this year which were each allegations of misconduct and potential breaches of the National Code of Local Government Conduct applying to members' conduct since 1990.

### 4. Access to information:

**Local Government (Access to Information) Act 1985**

National Code of Local Government Conduct 1990 ( Appendix A), The Relevant Authorities (General Principles ) Order 2001 (Appendix B).

## 5. Background

- 5.1 Following the Council meeting of 14 January 2002, the Head of Local Democracy received a written complaint from a member of the public (Complainant A) present at the Council meeting complaining about the conduct of two councillors, X and Y, at the meeting and requesting an apology from them. On 15 January, an e-mail was sent to the Chief Executive by an elected member B making a complaint in similar terms against the conduct of Councillor X. Councillor B asked the Chief Executive to refer the matter to the Council's Standards Committee.
- 5.2 The Complaints were referred to the Council's Monitoring Officer who advised that they each constituted potential breaches of National Code of Local Conduct 1990 and of principles contained in the Relevant Authorities (General Principles) Order 2001. It was agreed that the Monitoring Officer should investigate the allegations against the two members, seeking the response of these members to the allegations and based on this either carrying out a further investigation or seeking to mediate a resolution, which could include an apology.

## 6. Complaint against Councillor X

- 6.1 In his letter of 15 January 2002, Complainant A stated as follows:
- “ I was a last night's Full Council Meeting and I was deeply offended by two Councillors. Councillor X looked up at the Public Gallery and shouted “Tory Scum” to members present.”
- 6.2 Councillor Z's complaint was in the following terms :
- “ I am advised that, shortly after I left the Chamber last night, Cllr X used the epithet “Tory scum” in referring to supporters in the gallery.”
- 6.3 The Monitoring Officer informed Councillor X of the allegations and requested a response. Telephone contact was made on 14 March 2002 in which Councillor X denied making any comment to those in the public gallery and particularly denied making the comments complained of.
- 6.4 On 19 March the Monitoring Officer wrote to the two complainants requesting any further evidence they wished to supply which supported their allegations. No reply was received to these letters and on 11 April, the Monitoring Officer wrote a letter to the two complainants informing them the Councillor X did not agree with their descriptions of events. The letter informed them that as a result of this it would be necessary to conduct a formal investigation of the allegations and requested that they confirm that they wished to proceed with their complaint. The letter repeated the request made in the earlier letters of 19 March, asking them for a statement of any additional evidence they wished to offer and also asked them to supply the names and addresses of any witnesses that are prepared to give evidence supporting their allegations.
- 6.5 The Monitoring Officer has received no reply to these letters from the complainants and subject to the views of the Standards Committee will write forthwith to the complainants informing them that unless he hears from them to the contrary, he intends to take no further action in relation to their allegations against Councillor X.

**7. Complaint against Councillor Y**

6.6 In his letter of 15 January 2002, Complainant A stated as follows:

“ Minutes after this appalling *incident (referring to the matter complained against Councillor X)*, Councillor Y responded to Cllr T's written question ..... He, like Councillor X, looked at members sat in the Public Gallery and said:

“ “ This is typical of the Tories.

“ “ They are, like the Daily Mail and Evening Standard, xenophobic, racist and bigoted.” ”

“ Looking directly at the Gallery, he went on to say:

“ “ Yes, you are xenophobic, racist and bigoted.” ”

6.7 The Monitoring Officer communicated this complaint to Councillor Y and asked for his response to it. Councillor Y replied by e-mail on 12 March 2002 not denying that he had used the words complained about but denying that he had directed them against individuals present at the meeting. In his e-mail, Councillor Y maintained that he was at all times “referring to the Conservative Party as a political entity and its policies.”

6.8 The Monitoring Officer replied to this e-mail on 14 March suggesting that he and Councillor Y meet to discuss the complaint and his response to it. In response to this, telephone contact was made and following this it was agreed that the Monitoring Officer should draft a letter to the complainant in terms agreed and pass it to Councillor Y for consideration.

6.9 This course of action was followed and a draft was sent to Councillor Y for his comments on 7 May 2002.

6.10 Prior to this, the Monitoring Office had written to the complainant asking him to provide any additional evidence he wished to produce in support of his complaint.

6.11 To date the Monitoring Officer has not received a reply to his letter of 19 March to the complainant requesting any further evidence he wishes to supply.

6.12 To date the Monitoring Officer has not received a reply to the draft response sent to Councillor Y on 7 May 2002.

6.13 If, following the meeting of the Standards Committee, the Monitoring Officer does not receive a response from either complainant or Councillor Y, he proposes to write to the complainant, asking him whether he wishes his complaint to be pursued . In the event that the complainant confirms that he wishes his complaint dealt with, the Monitoring Officer proposes to conduct interviews with both parties and any other witnesses and report his findings to a future meeting of the Standards Committee.

Appendix A

National Code of Local Government Conduct 1990  
To be attached.

6-214 United Kingdom being found in breach of its obligations by the European Court of Justice but also in liability of a local authority towards an unsuccessful tenderer.

### Enquiries

9. Enquiries on this Circular should be addressed (in England) to LG3 Division, Department of the Environment, 2 Marsham Street, London SW1P 3EB and (in Wales) to EPLG Division (LG), Welsh Office, Cathays Park, Cardiff CF1 3NQ.

*Joint Circular dated April 10, 1990, from the  
Department of the Environment (8/90)  
Welsh Office (23/90)*

## 6-215 THE NATIONAL CODE OF LOCAL GOVERNMENT CONDUCT

### The Code

1. We are directed by the Secretary of State for the Environment, the Secretary of State for Scotland and the Secretary of State for Wales to draw the attention of your authority to the National Code of Local Government Conduct, which they have issued under their powers under section 31 of the Local Government and Housing Act 1989. A copy of the Code is annexed.

2. A code of conduct for local government was proposed and drafted by the Redcliffe-Maud Committee on Local Government Rules of Conduct in 1974 and endorsed by the Salmon Royal Commission on Standards of Conduct in Public Life. A code in line with these proposals was issued by the Department of the Environment, the Scottish Development Department and the Welsh Office in 1975. The Widdicombe Committee on the Conduct of Local Authority Business recommended that the Code should be given statutory status, and that provision should be made for new councillors to declare that they would be guided by it. Sections 30 and 31 of the Local Government and Housing Act 1989 implement these recommendations.

3. The Code now issued is based on a revision of the 1975 Code carried out by a joint working group representing the Government Departments concerned and the local authority associations. The local authority associations were consulted on the draft prepared by that working group. The Code now issued incorporates amendments to reflect their comments.

4. The Code has been approved by resolutions of both Houses of Parliament, in accordance with section 31 of the Local Government and Housing Act 1989, and therefore carries their authority.

5. The Code applies to all members of the authorities and other bodies to which this circular is addressed, including members coopted to committees, sub-committees and joint committees.

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6. It is important that the new Code is drawn to the attention of all existing members of your authority, and of all new members, as and when they are elected or appointed. Where local authorities provide for copies of their standing orders to be distributed to all members, they should consider including the Code as an annex. 6-215

7. The Code replaces that given in the joint circular dated 2nd October 1975 (DOE 94/75, WO 166/75 and SDD 95/75) which is cancelled.

#### **Declaration on acceptance of office**

8. Section 31 of the Act also provides that the form of declaration of acceptance of office under section 83 of the Local Government Act 1972 or section 33A of the Local Government (Scotland) Act 1973 may include an undertaking by the declarant to be guided by the National Code of Local Government Conduct in the performance of his functions. The Secretaries of State intend making orders to this effect to come into force on 3rd May 1990 for authorities other than parish and community councils, and 1st January 1991 for parish and community councils.

#### **Local Ombudsman**

9. In carrying out an investigation, the local ombudsman may find that a breach of the National Code of Local Government Conduct by any individual member of the authority, constitutes maladministration. Section 32 of the 1989 Act requires that in these circumstances the local ombudsman must name the member or members concerned in his report on the investigation and give particulars of the breach unless he is satisfied that it would be unjust to do so. The Secretaries of State also intend to bring this provision into force on 3rd May 1990.

#### **Financial and Manpower Implications**

10. This Circular has no significant implications for either the expenditure or the manpower of local authorities.

#### **Enquiries**

11. Enquiries on this circular should be addressed (in England) to the Department of the Environment, Local Government 1 Division, 2 Marsham Street, London SW1P 3EB, 01-276 4108; (in Wales) to the Welsh Office, Local Government Division (LG), Cathays Park, Cardiff CF1 3NQ, 0222 823236; and (in Scotland) to the Scottish Development Department, Local Government Division, New St., Andrews House, Edinburgh EH1 3SX, 031-244 4060.

### **ANNEX**

#### **NATIONAL CODE OF LOCAL GOVERNMENT CONDUCT**

##### **Introduction**

*The National Code of Local Government Conduct provides, by way of guidance to members of local authorities, recommended standards of conduct in carrying out their duties, and in their relationships with the council and the council's officers.*



6-215 *The Code is issued jointly by the Secretary of State for the Environment, the Secretary of State for Scotland and the Secretary of State for Wales, under the provisions of the Local Government and Housing Act 1989. The Code has been agreed by associations representing local authorities in all three countries, and approved by both Houses of Parliament.*

*The Code applies to all members of*

*in England, county councils, district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly and parish and town councils;*

*in Scotland, regional councils, islands councils, district councils, and joint boards and committees;*

*in Wales, county councils, district councils and community and town councils.*

*All councillors are required on accepting office to declare that they will be guided by the Code.*

*The Code also applies to all members of committees, joint committees, and sub-committees of these authorities, whether or not they are councillors, and whether or not they are voting members of those bodies.*

*The Code represents the standard against which the conduct of members will be judged, both by the public, and by their fellow councillors. The local ombudsmen may also regard a breach of the Code as incompatible with good administration, and may make a finding of maladministration by the council in these circumstances.*

## THE CODE

### The Law and standing orders

1. Councillors hold office by virtue of the law, and must at all times act within the law. You should make sure that you are familiar with the rules of personal conduct which the law and standing orders require, and the guidance contained in this Code. It is your responsibility to make sure that what you do complies with these requirements and this guidance. You should regularly review your personal circumstances with this in mind, particularly when your circumstances change. You should not at any time advocate or encourage anything to the contrary. If in any doubt, seek advice from your council's appropriate senior officer or from your own legal adviser. In the end however, the decision and the responsibility are yours.

### Public duty and private interest

2. Your over-riding duty as a councillor is to the whole local community.

3. You have a special duty to your constituents, including those who did not vote for you.

4. Whilst you may be strongly influenced by the views of others, and of your party in particular, it is your responsibility alone to decide what view to take on any question which councillors have to decide.

5. If you have a private or personal interest in a question which councillors have to decide, you should never take any part in the decision, except in the special circumstances described below. Where such circumstances do permit you to participate, you should never let your interest influence the decision.

6. You should never do anything as a councillor which you could not justify to the public. Your conduct, and what the public believes about your conduct, will affect the reputation of your council, and of your party if you belong to one. 6-215

7. It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.

#### **Disclosure of pecuniary and other interests**

8. The law makes specific provision requiring you to disclose both direct and indirect pecuniary interests (including those of a spouse with whom you are living) which you may have in any matter coming before the council, a committee or a sub-committee. It prohibits you from speaking or voting on that matter. Your council's standing orders may also require you to withdraw from the meeting while the matter is discussed. You must also by law declare certain pecuniary interests in the statutory register kept for this purpose. These requirements must be scrupulously observed at all times.

9. Interests which are not pecuniary can be just as important. You should not allow the impression to be created that you are, or may be, using your position to promote a private or personal interest rather than forwarding the general public interest. Private and personal interests include those of your family and friends, as well as those arising through membership of, or association with, clubs, societies and other organisations such as the Freemasons, trade unions and voluntary bodies.

10. If you have a private or personal non-pecuniary interest in a matter arising at a local authority meeting, you should always disclose it, unless it is insignificant, or one which you share with other members of the public generally as a ratepayer, a community chargepayer or an inhabitant of the area.

11. Where you have declared such a private or personal interest, you should decide whether it is clear and substantial. If it is not, then you may continue to take part in the discussion of the matter and may vote on it. If, however, it is a clear and substantial interest, then (except in the special circumstances described below) you should never take any further part in the proceedings, and should always withdraw from the meeting whilst the matter is being considered. In deciding whether such an interest is clear and substantial, you should ask yourself whether members of the public, knowing the facts of the situation, would reasonably think that you *might* be influenced by it. If you think so, you should regard the interest as clear and substantial.

12. In the following circumstances, but only in these circumstances, it can still be appropriate to speak, and in some cases to vote, in spite of the fact that you have declared such a clear and substantial private or personal interest:

- (a) if your interest arises in your capacity as a member of a public body, you may speak and vote on matters concerning that body; for this purpose, a public body is one where, under the law governing declarations of pecuniary interests, membership of the body would not constitute an indirect pecuniary interest;

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- (b) if your interest arises from being appointed by your local authority as their representative on the managing committee, or other governing body, of a charity, voluntary body or other organisation formed for a public purpose (and not for the personal benefit of the members), you may speak and vote on matters concerning that organisation;
- (c) if your interest arises from being a member of the managing committee, or other governing body of such an organisation, but you were not appointed by your local authority as their representative, then you may speak on matters in which that organisation has an interest; you should not vote on any matter directly affecting the finances or property of that organisation, but you may vote on other matters in which the organisation has an interest;
- (d) if your interest arises from being an ordinary member or supporter of such an organisation (and you are not a member of its managing committee or other governing body), then you may speak and vote on any matter in which the organisation has an interest.

### Dispensations

13. Circumstances may arise where the work of your authority is affected because a number of councillors have personal interests (pecuniary or non-pecuniary) in some question.

14. In certain circumstances, you may be able to get a dispensation to speak, and also to vote, in spite of a pecuniary interest. Such dispensations are given under statute by the Secretary of State in the case of county, regional, islands, district and London borough councils, and (in England and Wales) by the district council in the case of town, parish and community councils.

15. In the case of non-pecuniary interests, there may be similar exceptions to the guidance contained in paragraphs 9 to 12 of this Code. In the circumstances below it may be open to you to decide that the work of the council requires you to continue to take part in a meeting which is discussing a matter in which you have a clear and substantial private or personal interest.

16. Before doing so, you should

- (a) take advice from the chairman of your local authority (if this is practicable) and from the appropriate senior officer of the authority as to whether the situation justifies such a step;
- (b) consider whether the public would regard your interest as so closely connected with the matter in question that you could not be expected to put your interest out of your mind (for example, the matter might concern a decision by the council affecting a close relative); if you think that they would, you should never decide to take part in a discussion of, or a vote on, the matter in question; and
- (c) consider any guidance which your council has issued on this matter.

17. The circumstances in which (after such consultation and consideration) you may decide to speak and vote on a matter in which you have a clear and substantial private and personal non-pecuniary interest are *if, but only if*:

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- (a) at least half the council or committee would otherwise be required to withdraw from consideration of the business because they have a personal interest; or
- (b) your withdrawal, together with that of any other members of the council or committee who may also be required to withdraw from consideration of the business because of a personal interest, would upset the elected party balance of the council or committee to such an extent that the decision is likely to be affected.

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18. If you decide that you should speak or vote, notwithstanding a clear and substantial personal or private non-pecuniary interest, you should say at the meeting, before the matter is considered, that you have taken such a decision, and why.

19. The guidance set out in paragraphs 15-18 above also applies to sub-committees. However if the sub-committee is very small, or if a large proportion of members declare a personal interest, it will usually be more appropriate for the matter to be referred to the parent committee.

#### **Disclosure in other dealings**

20. You should always apply the principles about the disclosure of interests to your dealings with council officers, and to your unofficial relations with other councillors (at party group meetings, or other informal occasions) no less scrupulously than at formal meetings of the council, committees and sub-committees.

#### **Membership of committees and sub-committees**

21. You, or some firm or body with which you are personally connected, may have professional, business or other personal interests within the area for which the council are responsible. Such interests may be substantial and closely related to the work of one or more of the council's committees or sub-committees. For example, the firm or body may be concerned with planning, developing land, council housing, personnel matters or the letting of contracts for supplies, services or works. You should not seek, or accept, membership of any such committee or sub-committee if that would involve you in disclosing an interest so often that you could be of little value to the committee or sub-committee, or if it would be likely to weaken public confidence in the duty of the committee or sub-committee to work solely in the general public interest.

#### **Leadership and Chairmanship**

22. You should not seek, or accept, the leadership of the council if you, or any body with which you are associated has a substantial financial interest in, or is closely related to, the business or affairs of the council. Likewise, you should not accept the chairmanship of a committee or sub-committee if you have a similar interest in the business of the committee or sub-committee.

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### Councillors and officers

6-215 23. Both councillors and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees.

24. Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers.

25. The law and standing orders lay down rules for the appointment, discipline and dismissal of staff. You must ensure that you observe these scrupulously at all times. Special rules apply to the appointment of assistants to political groups. In all other circumstances, if you are called upon to take part in appointing an officer, the only question you should consider is which candidate would best serve the whole council. You should not let your political or personal preferences influence your judgement. You should not canvass the support of colleagues for any candidate and you should resist any attempt by others to canvass yours.

### Use of confidential and private information

26. As a councillor or a committee or sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else.

### Gifts and hospitality

27. You should treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organisation making the offer may be doing, or seeking to do, business with the council, or may be applying to the council for planning permission or some other kind of decision.

28. There are no hard or fast rules about the acceptance or refusal of hospitality or tokens of goodwill. For example, working lunches may be a proper way of doing business, provided that they are approved by the local authority and that no extravagance is involved. Likewise, it may be reasonable for a member to represent the council at a social function or event organised by outside persons or bodies.

29. You are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government. The offer or receipt of gifts or invitations should always be reported to the appropriate senior officer of the council.

### Expenses and allowances

30. There are rules enabling you to claim expenses and allowances in connection with your duties as a councillor or a committee or sub-committee members. These rules must be scrupulously observed.

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### Dealings with the council

31. You may have dealings with the council on a personal level, for instance as a ratepayer or community chargepayer, as a tenant, or as an applicant for a grant or a planning permission. You should never seek or accept preferential treatment in those dealings because of your position as a councillor or a committee or sub-committee member. You should also avoid placing yourself in a position that could lead the public to think that you are receiving preferential treatment: for instance, by being in substantial arrears to the council, or by using your position to discuss a planning application personally with officers when other members of the public would not have the opportunity to do so. Likewise, you should never use your position as a councillor or a committee or sub-committee member to seek preferential treatment for friends or relatives, or any firm or body with which you are personally connected.

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### Use of council facilities

32. You should always make sure that any facilities (such as transport, stationery, or secretarial services) provided by the council for your use in your duties as a councillor or a committee or sub-committee member are used strictly for those duties and for no other purpose.

### Appointments to other bodies

33. You may be appointed or nominated by your council as a member of another body or organisation—for instance, to a joint authority or a voluntary organisation. You should always observe this Code in carrying out your duties on that body in the same way you would with your own authority.

## CIRCULAR NO. 11/90

*Dated August 2, 1990, issued by the Department of the Environment*

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### Local Authority Capital Finance

#### *Introduction*

1. I am directed by the Secretary of State for the Environment to draw attention to Part IV of the Local Government and Housing Act 1989 ("the Act"), which received Royal Assent on 16 November 1989 and which provides for a new system of local authority capital finance, and to the following regulations ("the regulations") which have been made under Part IV:

- the Local Authorities (Capital Finance) Regulations 1990 (SI 1990 No. 432: referred to below as the "Capital Finance Regulations")
- the Local Authorities (Capital Finance) (Rate of Discount) Regulations 1990 (SI 1990 No. 316: the "Rate of Discount Regulations")
- the Local Authorities (Approved Investments) Regulations 1990 (SI 1990 No. 426: the "Approved Investments Regulations")
- the Local Authorities (Borrowing) Regulations 1990 (SI 1990 No. 767: the "Borrowing Regulations") as amended by the Local Authorities (Borrowing) (Amendment) Regulations 1990 (SI 1990 No. 1091)
- the Local Authorities (Capital Finance) (Prescribed Bodies) Regulations 1990 (SI 1990 No. 404).

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## Appendix B

### THE GENERAL PRINCIPLES

#### *Selflessness*

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

#### *Honesty and Integrity*

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

#### *Objectivity*

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

#### *Accountability*

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

#### *Openness*

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

#### *Personal Judgement*

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

#### *Respect for Others*

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

#### *Duty to Uphold the Law*

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

*Stewardship*

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

*Leadership*

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

**EXPLANATORY NOTE**

This Order specifies the principles, which are to govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, in accordance with section 49(1) of the Local Government Act 2000.

Article 3(1) gives effect to the Schedule to the Order, and paragraph (2) of that article provides that the principles are expected to govern only the official conduct of members and co-opted members, apart from the second and eighth, which have effect on all occasions. The Schedule specifies the principles.



## **BRIEFING NOTES ON THE NEW ETHICAL FRAMEWORK**

1. GENERAL PRINCIPLES OF LOCAL AUTHORITY CONDUCT
2. CODE OF CONDUCT
3. STANDARDS COMMITTEE
4. MONITORING OFFICER
5. STANDARDS BOARD
6. ETHICAL STANDARDS OFFICERS
7. CASE TRIBUNALS

### **1. GENERAL PRINCIPLES OF LOCAL GOVERNMENT CONDUCT**

- 1.1 The Government has defined 10 principles, which are to govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, in accordance with section 49(1) of the Local Government Act 2000.

These are:

#### *Selflessness*

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

#### *Honesty and Integrity*

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

#### *Objectivity*

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

#### *Accountability*

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

#### *Openness*

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

#### *Personal Judgement*

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

*Respect for Others*

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

*Duty to Uphold the Law*

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

*Stewardship*

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

*Leadership*

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

- 1.2 These principles are expected to govern only the official conduct of members and co-opted members, apart from the second and eighth (italicised), which have effect on all occasions.

2. **CODE OF CONDUCT**

- 2.1 Following consultation, the Government has issued a Model Code of Conduct for elected and co-opted Members ("the Code" attached at Appendix A). The Code must be adopted as a minimum by all relevant authorities. Further provisions can be added to it as decided locally.
- 2.2 The Model Code came into force on 28 November 2001 and must be adopted by 5 May 2002. The Council is intending to adopt the Code at the Council meeting of 15 April 2002. In addition, existing Members and co-opted Members will be required to sign an undertaking to uphold the Code within 2 months of adoption and following the election, newly elected Councillors will not be able to act until they have signed as part of their acceptance of office a similar declaration.
- 2.3 The main areas covered by the Code are:
- An obligation to treat others with respect and to promote equality through no unlawful discrimination – paragraph 2. of the Code.
  - A requirement not to compromise the impartiality of those who work for the authority including a contractor – paragraph 2. of the Code.
  - A requirement not to disclose confidential information given or acquired without consent, nor to obstruct lawful access to information – paragraph 3. of the Code.

- A requirement not to bring his/her office or authority into disrepute – paragraph 4. of the Code.
- A requirement not to abuse his/her position on behalf of friends or others to confer advantage or disadvantage – paragraph 5 (a) of the Code.
- A requirement not to use the authority's resources for political activities unless it would facilitate or be conducive to the discharge of the authority's functions or an office to which he/she has been appointed.
- An obligation to give reasons for decisions.
- An obligation to report another member's failure to comply with the Code to the Standards Board in writing where there is a reasonable belief that this has taken place – paragraph 7. of Code.
- New provisions in relation to the register of interests and declaration of interests – paragraphs 14. to 16. of the Code.
- A requirement to record gifts and hospitality in excess of a financial limit of £25 - paragraph 17. of the Code.

2.3 The Code applies to Members and voting co-opted members.

2.4 Members must abide by the Code whenever they:

- conduct the business of the authority,
- conduct the business of the office to which they have been elected or appointed to, or
- act as a representative of the authority.

2.5 The Code only applies to activities undertaken in an official capacity except:

- “ A member must not in his official capacity, or any other circumstances, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute” (Paragraph 4. of Code)
- “ A member must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage ..” (Paragraph 5(a) of Code)

- 2.6 Members of an authority must comply with the Code of any other relevant authority when appointed by the Council to that body. They will, however, be obliged to comply with the Council's own Code when they act as a representative on another body.
- 2.7 Once the Council adopts the Code of Conduct (with or without local variations) a number of existing statutory provisions/obligations are no longer in force. These include:
- Declaration of acceptance of office provisions ( order under section 83 of LGA 1972)
  - Power of Local Government Ombudsman to name members ( section 30 (3A) of LGA 1974)
  - Power to surcharge Councillors under Section 17 of the Audit Commission Act 1998
  - Wilful misconduct provisions of Section 18 of Audit commission Act 1998

### **3. DECLARATION OF INTERESTS**

3.1 The Code replaces the provisions of the old Code of Local Government Conduct – pecuniary and non-pecuniary interests – with concepts of personal interests and prejudicial interests

#### **3.2 Personal Interests**

3.2.1 Members will have a personal interest

- if it is an interest that is required to be disclosed in the register of interests, or,
- if they or their relative's or friend's financial position or wellbeing or that of :
  - any employment or business carried on by such persons,
  - any person who employs or has appointed such persons,
  - any firm in which they are a partner any company of which they are directors,
  - any corporate body in which they have a beneficial interest in shares worth over £5,000 nominal value,
  - any bodies membership of which is registerable by the member in which such a person holds a position of control or management,

might reasonably be regarded as being affected to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area.

3.2.2 Personal interests must be declared and where the Member having such an interest has made an executive decision they must be recorded in any written statement of that decision.

3.2.3 A Member having a personal interest may also have a prejudicial interest.

### **3.3 Prejudicial Interests**

3.3.1 A prejudicial interests is a personal interest which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the members judgement of the public interest.

3.3.2 There are a number of situations set out at paragraph 10 of the Code where Members may regard themselves as not having a prejudicial interest. These include where the matter relates to:

- A body to which they have been appointed or nominated by the authority as its representative
- Housing functions of authority and Member is a housing tenant not two months in arrears
- School meals, transport and travelling expenses where Member is a parent or guardian
- Members allowances.

3.3.3 However a member of an Overview and Scrutiny Committee has both a personal and prejudicial interest in relation to a decision taken by a Committee of which they are members although this does not apply if they attend to answer questions or give evidence.

3.3.4 If a Member has a prejudicial interest as defined, they must:

- withdraw from the meeting whenever it becomes apparent that the matter is being considered at that meeting unless a dispensation has been given ;
- not exercise executive functions in relation to that matter;
- not seek improperly to influence a decision about that matter.

3.3.5 Members with a prejudicial interest may participate in a meeting of the Council's overview and scrutiny committee and joint or area committees providing that:

- these bodies are not exercising functions of the Council or its executive and

- the interest is not of a financial nature or does not relate to the decision of a committee of which he/she is a member.

### **3.4 Dispensations in respect of Prejudicial Interests**

3.4.1 Members may not have to withdraw from participating in a meeting where they have a prejudicial interest if they obtain a dispensation to this effect from the Council's Standards Committee.

3.4.2 The Standards Committee may grant such a dispensation where:

- the business of the Council would be impeded because the number of Members that are prohibited from participating in the business exceeds 50% of those members entitled or required to participate, or
- the Council is not able to comply with any duty which applies to it under section 15(4) of Local Government and Housing Act 1989

And where:

- the Member submitted a written request to Standard Committee with an explanation of why it was desirable to grant the dispensation and
- the Standards Committee concludes having regard to the content of the application and all other circumstances it is appropriate to grant the dispensation.

3.4.3 Dispensation is not permitted in relation to following matters:

- participation in business of the authority conducted more than four years after the date on which the dispensation is granted; or
- where dispensation sought is in relation to participation in meeting of an overview and scrutiny committee or sub committee where considering decision or action taken by any other of Council's committees, sub-committees, joint committees of which he is also be a member; or
- in circumstances where under the Code, a member of the Council's executive is prohibited from exercising functions which are the responsibility of the Council and which would otherwise be discharged by him/her alone.

3.4.4 The Standards Committee must ensure that a written record is kept of the existence, duration and nature of any dispensation granted and that this record is kept with the register of interests.

### **3.5 The Register of Interests**

3.5.1 The Council and specifically the Monitoring Officer has a duty to maintain a register of Members' Interests.

3.5.2 Members (including voting co-opted Members) must register their interests:

- within 28 days of the Code being adopted by the Council, or if later,
- within 28 days of the Member's appointment to office.

3.5.3 Registration must be in writing and notify the Monitoring Officer of a Member's **financial concerns** :

- employment of business;
- employer, partnership, company of which director;
- name of payee of person making payment in respect of his/her election / or any expenses incurred carrying out duties;
- name of company in which Member has beneficial interest exceeding nominal value of £25K or one hundredth of total issued share capital of body;
- description of contract of goods, services or works with Council where Member is partner, remunerated director or has beneficial interest as defined above;
- address/description of land in area of Council which Member has beneficial interest in;
- address/description of land where Council is landlord and tenant is firm in which Member is partner or is company of which remunerated director of has beneficial interest in as defined above;
- address/description of any land in area of Council where Member has licence to occupy for 28 days or longer;

3.5.4 Members must also notify in same time-scale other **non-financial matters**, which relate to the Member's membership of or position of general control or management in any:

- body to which he has been appointed or nominated by the Council as its representative;
- public authority or body exercising function of a public nature;
- company, industrial and provident society, charity, or body directed to charitable purposes;
- body whose principal purposes include the influence of public opinion or policy;

- trade union or professional association.

3.5.5 Members must notify Monitoring Officer in writing of any changes to the above interests within 28 days of becoming aware of them.

**3.6 Registration of gifts and hospitality**

3.6.1 A Member must notify the Monitoring Officer of the receipt of any gift or hospitality over value of £25 and of its nature.

**4. THE STANDARDS COMMITTEE**

4.1 Under the Local Government Act 2000, the Council has a duty to establish a Standards Committee whose functions will include promoting and maintaining high standards of conduct by Members and Co-opted Members of the Authority.

4.2 The Standards Committee must have a minimum of three members and must include at least one independent member. Independent members must be independent of the authority and may not be Councillors or officers of any local authority including Haringey Council. Where the Standards Committee is to have more than 3 members then at least 25% of these must be independent members.

4.3 The quorum for meetings of the Standards Committee is three people. At least one of these must be an independent member, unless the independent member has some conflict of interest and would be prevented from participating in the business of the meeting by virtue of the authority's Code of Conduct.

4.4 Section 54 of the Local Government Act 2000 sets out the general functions of standards committees, which are as follows:

- promoting and maintaining high standards of ethical conduct by members and co-opted members of the authority;
- assisting members and co-opted members of the authority to observe the authority's code of conduct;
- advising the authority on the adoption or revision of a code of conduct and monitoring the operation of the code;
- advising, training or arranging to train members and co-opted members on matters relating authority's code of conduct.

4.5 The Standards Committee will thus advise the Council on the adoption of a local code and monitor and update it as necessary. It will also have a key role in implementing the code, providing and organising training for Councillors on ethical conduct. The Committee will be a source of advice and guidance.



For example, advising Councillors on matters of conduct such as the treatment of personal interests. The Committee will also receive reports on the outcome of investigations undertaken by the Regional Ethical Standards Officer, the Standards Board or its Adjudication Panel.

- 4.6 The Standards Committee will not be able to take executive decisions or consider issues of policy, since these may introduce a conflict of interest with its primary role.
- 4.7 It is expected that in due course there will be further clarification of the standards committee's powers and its role in relation to conduct of investigations.
- 4.8 Section 54(3) of the Act also allows local Standards Committees to exercise other such functions as the authority considers appropriate.
- 4.9 The present terms of reference for Haringey Council's Standards Committee is attached at Appendix B.

## **5. THE MONITORING OFFICER**

- 5.1 With the introduction of the new ethical framework under Part III of the Act there will be significant changes to the role of the Monitoring Officer. This extended role will include a number of specific new functions.
- 5.2 The Monitoring Officer will have a key role in promoting and maintaining high standards of conduct within the Council, in particular through the provision of support to the Council's Standards Committee. He/she will also have to deal with allegations of breach of the new code of conduct, which are referred to them by an Ethical Standards Officer of the Standards Board for England.
- 5.3 A draft protocol for the Monitoring Officer is attached at Appendix C of this note.

## **6. THE NATIONAL STANDARDS BOARD**

- 6.1 The Standards Board will deal with written complaints that a Councillor has failed to observe their Council's Code of Conduct and will make arrangements for such complaints to be investigated by an Ethical Standards Officer ("ESO"). If an alleged breach is brought to the attention of the monitoring officer or standards committee, they must refer it to the Standards Board for consideration.
- 6.2 These investigations may take a variety of courses including an ESO:
  - referring the matter back to the Council and asking for a report from the Monitoring Officer;
  - in particularly serious cases, suspending a member from council meetings for 6 months while an investigation is underway,

- co-ordinating his or her investigations with the Auditor or the Ombudsman if it appears to raise matters of maladministration or financial impropriety
- producing a written report which may recommend:
  - that the allegation was unsubstantiated,
  - that no further action was necessary, or
  - that the matter should be referred back to the Council's standards committee or forwarded to an independent Adjudication Panel for it to be heard by a Case Tribunal.

6.3 A Case Tribunal may impose penalties ranging from public censure through to suspension from Committees or from the Council itself, up to a prescribed maximum period. It could also disqualify from the office of Councillor for up to maximum period, provisionally 5 years.

6.4 The Standards Board will also have a pro-active role in issuing guidance to Councils and information about best practice on issues of conduct. It will also maintain regional lists of independent persons available to be co-opted by individual Councils onto their own Standards Committee.

## **7. Reviews and Appeals**

7.1 Where an ESO decides not to investigate a complaint, the complainant may ask the Standards Board to review the ESO's decision. The Standards Board, will normally only do this where there is new evidence or there were errors in the process leading up to the ESO's decision.

7.2 There is no right to appeal against or seek a review of a decision to investigate a complaint.

7.3 There is no right to appeal or review an ESO's final decision on how to dispose of a complaint (see para. 6.2 above) by either complainant or the Member complained against.

7.4 A decision of an Adjudication Panel- either interim or final may be appealed against to the High Court.

**APPENDIX A**

THE MODEL CODE OF CONDUCT - AUTHORITIES OPERATING EXECUTIVE  
ARRANGEMENTS

PART I  
GENERAL PROVISIONS  
*Scope*

1. - (1) A member must observe the authority's code of conduct whenever he -

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

and references to a member's official capacity shall be construed accordingly.

(2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, 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 must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, he 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.

(4) In this code, "member" includes a co-opted member of an authority.

*General Obligations*

2. A member must -

- (a) promote equality by not discriminating unlawfully against any person;
- (b) treat others with respect; and

(c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

**3. A member must not -**

(a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor

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

**4. 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.**

**5. A member -**

(a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself 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; and

(ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.

**6. - (1) A member must when reaching decisions -**

(a) have regard to any relevant advice provided to him by -

(i) the authority's chief finance officer acting in pursuance of his duties under section 114 of the Local Government Finance Act 1988; and

(ii) the authority's monitoring officer acting in pursuance of his duties under section 5(2) of the Local Government and Housing Act 1989; and

(b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.

(2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "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.

7. A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

PART 2  
INTERESTS  
*Personal Interests*

8. - (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting 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 or -

- (a) any employment or business carried on by such persons;
- (b) 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;
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.

(2) In this paragraph -

- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
- (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

*Disclosure of Personal Interests*

9. - (1) 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) Subject to paragraph 12(1)(b) below, 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.

*Prejudicial Interests*

10. - (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 may regard himself as not having a prejudicial interest in a matter if that matter relates to -

- (a) another relevant authority of which he is a member;
- (b) another public authority in which he holds a position of general control or management;
- (c) a body to which he has been appointed or nominated by the authority as its representative;
- (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
- (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
- (f) the functions of the authority in respect of 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; and
- (g) the functions of the authority in respect of 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.

*Overview and Scrutiny Committees*

11. - (1) For the purposes of this Part, a member must if he 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, regard himself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's -

- (a) committees or sub-committees; or
- (b) joint committees or joint sub-committees,

of which he may also be a member.

(2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

*Participation in Relation to Disclosed Interests*

12. - (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any 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 has obtained a dispensation from the authority's standard's 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 may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, 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.

13. For the purposes of this Part, "meeting" means any meeting of -

(a) the authority;

(b) the executive of the authority; or

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

PART 3

THE REGISTER OF MEMBERS' INTERESTS

*Registration of Financial and Other Interests*

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of -

- (a) any employment or business carried on by him;
- (b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;
- (c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;
- (d) the name of 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;
- (e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
- (f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;
- (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
- (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.

**15.** Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any -

- (a) body to which he has been appointed or nominated by the authority as its representative;
- (b) public authority or body exercising functions of a public nature;
- (c) company, industrial and provident society, charity, or body directed to charitable purposes;
- (d) body whose principal purposes include the influence of public opinion or policy; and



(e) trade union or professional association.

**16.** A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's monitoring officer of that change.

*Registration of Gifts and Hospitality*

**17.** A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

**APPENDIX B**

**STANDARDS COMMITTEE**

**TERMS OF REFERENCE**

- (a) To advise the Council on the adoption of a local Code of Conduct for Members, to promote, develop and maintain high standards of conduct by the members and co-opted members of the authority, including:
  - providing and organising training of Councillors in ethical conduct
  - to be a source of advice and guidance to Members on matters of conduct
  - giving advice to individual Councillors on such issues as the treatment of personal interests including the declaration and registration of interests, and, generally, on matters of conduct.
- (b) To monitor and update the Code as necessary;
- (c) To be responsible for the implementation of the Code and providing or organising training for members on ethical conduct;
- (d) To consider a report of the Monitoring Officer on any matter referred to them by an Ethical Standards Officer of the Standards Board for England under Sections 60 or 64 of the Local Government Act 2000 and to report any relevant issues to the Council.
- (e) To respond to national reviews and consultations on standards related issues
- (f) To provide high level oversight of the following :
  - internal and external audit.
  - the whistle-blowing policy.
  - Complaints and ombudsman cases.
  - the authority's constitution.

## APPENDIX C

### PROTOCOL FOR MONITORING OFFICER

- 1 The Monitoring Officer undertakes to discharge his or her responsibilities outlined in this paper with determination and a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and members but also the flow of information and access to debate particularly at early stages.
- 2 The following arrangements and understandings between Monitoring Officers and colleagues and members are designed to help ensure the effective discharge of their functions:
  - (a) The Monitoring Officer will have advance notice of Chief Executive's Management Board meetings and agendas and reports and have the right to attend and speak.
  - (b) Advance written notice of meetings whether formal or informal between Chief Officers and members of the Executive or Committee Chairmen will be given to the Monitoring Officer where any significant procedural, vires or other constitutional issues are likely to arise.
  - (c) Chief Officers will give notice in writing to the Monitoring Officer of all emerging issues of significant concern including legality, probity, vires and constitutional issues.
  - (d) The Monitoring Officer or his/her staff will have copies of all reports to members. The Monitoring Officer is expected to develop good liaison and working relations with the Standards Board, the District Auditor and the Ombudsman including the giving and receiving of relevant information whether confidential or otherwise.
  - (e) The Monitoring Officer will have a special relationship with the Chairman of the Council, Chairman of the Standards and Overview and Scrutiny Committees and will ensure the Head of Paid Service and Chief Financial Officer have up-to-date information regarding emerging issues.
  - (f) The Monitoring Officer will be expected to make enquiries into allegations of misconduct in the absence of a written complaint being received by the Standards Board and if appropriate will make a written report to the Standards Committee unless the Monitoring Officer and Chair of Standards Committee agree a report is not warranted.
  - (g) The Head of Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity.
  - (h) In carrying out any investigation (whether under Regulations or otherwise) the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions.

- (i) The Monitoring Officer will have control of a budget sufficient to enable him/her to seek Counsel's opinion on any matter concerning his/her functions.
- (j) The Monitoring Officer will be responsible for preparing a training programme for members on the ethical framework subject to the approval of the Standards Committee.
- (k) The Monitoring Officer will report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation in particular with the Head of Paid Service and Chief Financial Officer.
- (l) In consultation with the Chairman of the Council and Standards Board the Monitoring Officer may defer the making of a formal report under Section 5 LGHA 1989 where another investigative body is involved.
- (m) The Monitoring Officer will make a report to the Council from time to time as necessary on the staff, accommodation and resources required to discharge his/her functions.
- (n) The Monitoring Officer will appoint a deputy and keep him/her briefed on emerging issues.

## Statutory Instrument 2002 No. 339

### **The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002**

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#### STATUTORY INSTRUMENTS

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**2002 No. 339**

#### **LOCAL GOVERNMENT, ENGLAND AND WALES**

#### **The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002**

<i>Made</i>	<i>18th February 2002</i>
<i>Laid before Parliament</i>	<i>25th February 2002</i>
<i>Coming into force</i>	<i>18th March 2002</i>

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred upon him by sections 53(6), 81(5) and 105(2) of the Local Government Act 2000[1], and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and application**

1. - (1) These Regulations may be cited as the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 and shall come into force on 18th March 2002.

(2) These Regulations apply in relation to standards committees of relevant authorities in England<sup>[2]</sup>, and police authorities in Wales<sup>[3]</sup>, and references to "authority" shall be construed accordingly.

**Interpretation**

2. In these Regulations -

"the Act" means the Local Government Act 2000;

"dispensation" shall be construed in accordance with section 81(4) of the Act<sup>[4]</sup>;

"mandatory provisions" means the mandatory provisions of a model code of conduct which for the time being applies to the authority<sup>[5]</sup>; and

"member" means a member or co-opted member<sup>[6]</sup> of an authority.

**Circumstances in which dispensations may be granted**

3. - (1) The authority's standards committee may, subject to paragraph (2) below, grant a dispensation to a member in the following circumstances -

(a) the transaction of business of the authority would, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because -

(i) the number of members of the authority that are prohibited from participating in the business of the authority exceeds 50% of those members that are entitled or required to so participate; or

(ii) the authority is not able to comply with any duty which applies to it under section 15(4) of the Local Government and Housing Act 1989<sup>[7]</sup>;

(b) the member has submitted to the standards committee a written request for a dispensation explaining why it is desirable; and

(c) the standards committee concludes that having regard to the matters mentioned in paragraph (a) above, the content of the application made pursuant to paragraph (b) above, and to all the other circumstances of the case, it is appropriate to grant the dispensation.

(2) Nothing in sub-paragraph (1) above shall permit a dispensation to be granted -

(a) in respect of participation in business of the authority conducted more than four years after the date on which the dispensation is granted; or

(b) where the effect of the mandatory provisions from which a

dispensation is sought is that -

(i) a member is prohibited from participating in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority, or sub-committee of that committee, where that consideration relates to any decision made or action taken by any other of the authority's committees, sub-committees, joint committees, or joint sub-committees of which he may also be a member; or

(ii) a member of the authority's executive<sup>[8]</sup> is prohibited from exercising functions which are the responsibility of the executive of the authority and which would otherwise be discharged by him solely.

#### **Records of dispensations**

4. The authority's standards committee must ensure that -

(a) the existence, duration and nature of any dispensation is recorded in writing; and

(b) that such record is kept with the register of interests established and maintained under section 81(1) of the Act.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions

*Alan Whitehead*

Parliamentary Under Secretary of State, Department for Transport, Local Government and the Regions

18th February 2002

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#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations prescribe the circumstances in which a standards committee may grant dispensations to members and co-opted members of relevant authorities in England, and police authorities in Wales. If a member or co-opted member acts in accordance with the grant of a dispensation, any participation in business prohibited by the mandatory provisions of a model code of conduct issued under section 50(1) of that Act is not a failure to comply with the authority's code of conduct.

Regulations 1 and 2 make provision on citation, commencement and application, and define terms used in the Regulations.

Regulation 3 sets out the circumstances in which standards committees may grant dispensations. Paragraph (1) specifies that dispensations may only be granted if half the members entitled or required to participate in the business of the authority would not otherwise be able to, or the authority would not be able to comply with political balance principles. It specifies further that a member must submit a written request for a dispensation and that the standards committee must conclude that having regard to these matters and all the other circumstances of the case, it is appropriate to grant the dispensation. Paragraph (2) provides that a dispensation cannot be granted in respect of business conducted after four years. It also specifies that the circumstances in which dispensations can be granted do not extend to allowing a member of an overview and scrutiny committee to participate in the scrutiny of the decision of another committee in which he was involved or to allowing an individual to exercise executive functions where he is prohibited by the mandatory provisions from doing so.

Regulation 4 makes provision on keeping records of the dispensations granted.

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*Notes:*

[1] 2000 c. 2.[back](#)

[2] *See* section 49(6) of the Local Government Act 2000 ("the Act") for the definition of "relevant authority."[back](#)

[3] *See* section 81(8) of the Act for the power of the National Assembly for Wales to prescribe in regulations the circumstances in which standards committees of relevant authorities in Wales (other than police authorities) may grant dispensations.[back](#)

[4] Section 81(4) of the Act provides that any participation by a member in any business which is prohibited by the mandatory provisions of the model code of conduct applicable to an authority is not a failure to comply with the authority's code of conduct if that member has acted in accordance with a dispensation granted by the authority's standards committee.[back](#)

[5] *See* the model codes of conduct in the Local Authorities (Model Code of Conduct) (England) Order 2001 (S.I. 2001/3575), the Parish Councils (Model Code of Conduct) Order 2001 (S.I. 2001/3576), the National Park and Broads Authorities (Model Code of Conduct) (England) Order (S.I. 2001/3577) and the Police Authorities (Model Code of Conduct) Order 2001 (S.I. 2001/3578). Under section 51(4)(a) of the Act, a code of conduct adopted by an authority must incorporate the mandatory provisions of a model code of conduct which for the time being applies to the authority.[back](#)

[6] *See* section 49(7) of the Act for the definition of "co-opted member". Under section 83(3) and (4) of the Act, references to a member of a relevant authority include references to an elected mayor, an elected executive member, the Mayor of London and a member of the London Assembly.[back](#)

[7] 1989 c. 42. Section 15 has been modified by the Local Government (Committees and Political Groups) Regulations 1990 (S.I. 1990/1552).[back](#)



[8] Part II of the Act makes provision for executive arrangements for county councils, district councils, and London borough councils. Sections 14 to 16 make provision for individuals to exercise functions which are the responsibility of an executive.[back](#)

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