

CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS

QUESTION 1

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

It is clear that some conduct in private life can reflect upon a member's suitability to continue as a member, and that leaving a member in place until the next elections give the electorate an opportunity to remove him/her from office can seriously damage the reputation of an authority and of local government in general. It is therefore important that the Code of Conduct for Members should apply to at least some conduct in a member's private life, for example sexual offences, violent conduct fraud and dishonesty.

QUESTION 2

Do you agree with the definition of "criminal offence" for the purpose of the Members' Code? If not, what other definition would you support? Please give details.

The intention is that, by excluding criminal offences which result in a fixed penalty notice, the application of the Code should be limited to the more serious offences, and also avoid the confusion as to what fixed penalty notices constitute a criminal conviction, which are civil matters, and which are an alternative to prosecution. However, the proposed wording is insufficiently precise, as it can be interpreted as offences for which a fixed penalty notice is not available, or as an offence in connection with which the individual member was not given the option of a fixed penalty notice.

Further, a fixed penalty notice is sometimes available for relatively minor instances of what can be a serious offence, such as unauthorised tipping of waste materials. And failure by a member to comply with a regulatory regime which that member is responsible for enforcing can reflect very seriously on the credibility of that member, of the authority and of the regulatory regime.

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

QUESTION 3

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

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

A particular issue arises from the reference to acting as a “representative” of a local authority, as the word “representative” is not defined in the Act or the Code. Paragraph 2(5) clearly envisages that a member can be acting as a representative of the authority even where he/she is acting on behalf of another body.

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

QUESTION 4

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

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

QUESTION 5

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

There are three aspects to this question:

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

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

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

The Council recognises that it would be wrong to encourage a standards investigation which interfered with the criminal investigation. But where there is a long gap between the events and a conviction it discredits the standards system if no action can be taken, especially where the member's guilt may be very evident, or he/she may even have admitted guilt. Accordingly, there should be no bar on standards investigations and proceedings in advance of conviction

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

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

Standards proceedings are civil proceedings. They determine matters on the balance of the evidence before them. An actual conviction in a criminal court is the most cogent evidence of guilt, but it is not a comprehensive test. Thus, the member may have admitted guilt, or civil proceedings may have resulted in an injunction against the member for harassment, but there may either be no prosecution or the prosecution may not have been completed. Not all criminal offences result in a prosecution, so a member might have been sued successfully for fraud, which reflects very badly upon their suitability to

be in control of public funds, but the CPS may have decided that despite evident guilt no public interest would be served by an actual prosecution. At an extreme level, if a member were found with their hand in the authority's till, or with the murder weapon in hand, or civil proceedings have demonstrated facts which amount to a criminal offence, it does local government no credit to leave the member in office until an eventual conviction.

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

QUESTION 6

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

1.6.1 Make Paragraph 12(2) mandatory rather than adoptive for Parish Councils

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

1.6.2 Membership of other bodies

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

1.6.3 Registration of Gifts and Hospitality

It is suggested that Paragraph 8(1)(a)(viii) might usefully be amended to clarify that a member is required to register any gift or hospitality with an estimated value of at least £25. The current drafting of Paragraph 8(1)(a)(viii) is different from that of other such outside interests, as it refers to "the interests" of the donor or hospitality provider, rather than referring to the donor or hospitality provider itself. This does not fit with the registration requirement in Paragraph 13, as taken literally it requires the member to register "the interests of" the donor or hospitality provider. Accordingly, Paragraph 8(1)(a)(viii) should be amended by the deletion of the words "the interests of", and Paragraph 13 should be amended by the addition of a new Paragraph

13(3) as follows – “(3) In respect of a personal interest arising under Paragraph 8(1)(a)(viii), you must register both the identity of the person from whom you have received the gift or hospitality and provide details of the gift or hospitality and its estimated value.”

1.6.4 Prejudicial Interests

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

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

1.6.5 Registration of Interests

It is proposed that existing registrations of interests should carry forward when the revised Code is introduced. It is good practice to give each member a copy of their existing register entries in May each year and ask them to ensure that it is up to date. Where this practice is followed, a new registration, incorporating any changes in the definitions of registrable interests, would be obtained anyway.

1.6.6 Additional Suggested Amendment - Application to suspended Members

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

1.6.7 Additional Suggested Amendment - Disclosure and misuse of confidential information in private life

The disclosure of confidential information which a member has obtained through their connection with the authority, or its use for personal advantage, in private life, would be an example of serious misconduct, but at present this is not covered by the Code of Conduct. It is necessary to further amend Section 51 of the Local Government Act 2000 to refer to conduct which **does** constitute a criminal offence, rather than “**would**” constitute a criminal offence, so

it is relatively simple to provide that non-criminal conduct can amount to a breach of the Code, where this is specified in the Code, and then amend Paragraph 2(3), such that Paragraphs 4 and 6(a) can constitute a breach of the Code even where the conduct occurs in private life and does not amount to a criminal offence.

1.6.8 Additional Suggested Amendment – Value of Shareholdings

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

1.6.9 Additional Suggested Amendment – Gifts and Hospitality

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

1.6.10 Additional Suggested Amendment – Close Association

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

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

1.6.11 Additional Suggested Amendment – the majority of council tax payers, ratepayer or inhabitants of the electoral division or ward affected by the decision.

The present Paragraph 8(1)(b) is unclear as to whether the comparator in any particular case is **either** council tax payers, ratepayers or inhabitant, **or** the aggregate of all three categories. In practice, it must be the category which the member comes within for this purpose, otherwise the relatively higher numbers of “inhabitants” would always dominate and make the mention of the other categories redundant. The Council suggests that Paragraph 8(1)(b) be amended to read “.... Than the majority of either the council tax payer, ratepayers or inhabitants of the , in any case being a category of which you or the relevant person is a member.”

1.6.12 Additional Suggested Amendment – Disclosure of Personal Interests

Paragraph 9(1) requires disclosures “at the commencement of consideration (of the matter)”. In practice most authorities have disclosures of interest at the start of the meeting, which is advantageous in drawing to members' attention the need to make disclosures, allowing officers to remind individual members where a member may have forgotten to make such disclosure, and allowing the meeting then to discharge its business without frequent interruption. The Council suggests that Paragraph 9(1) should be amended to reflect this practice, to read “... at the commencement of the meeting or at such earlier occasion during the meeting as is prescribed by the authority for this purpose, or when the interest becomes apparent.”

1.6.13 Additional Suggested Amendment – Registration of Sensitive Information

The drafting of Paragraph 14(1) does not provide an audit trail. So the member can inform the Monitoring Officer verbally of the sensitive information, and the Monitoring Officer can give verbal agreement to the fact that the information is sensitive. Then, when a complaint is made that the member has failed to register the interest, there is then no written record that the member has got clearance, leaving the conscientious member exposed. As a very simple amendment, The Council suggests that Paragraph 14(1) be amended to read as follows – “When you notify your authority's Monitoring Officer in writing that you consider that particular information relating to any of

your personal interest is sensitive information, and your authority's Monitoring Officer has notified you in writing that he/she agrees that it is sensitive, you need not.....”

QUESTION 7

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

1.7.1 Additional Suggested Amendment – Overview and Scrutiny Committees

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

QUESTION 8

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

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

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

of officers' notes of meetings as background papers when formal decisions come to be taken.

1.8.2 Additional Suggested Amendment – Application to Ward Councillor Decision-Making

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

1.8.3 Additional Suggested Amendment – Private Representations

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

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

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

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

- (a) do so on the basis of the merits of the circumstances and in the public interest
- (b) have regard to any relevant advice provided by the authority's officers – in particular by:
 - (i) the Chief Finance Officer
 - (ii) the Monitoring Officer
 - (iii) the Chief Legal Officer, who should be consulted whenever there is any doubt as to the authority's powers to act, or as to whether the action proposed lies within the policy framework agreed by the authority; where the legal consequences of action or failure to act by the authority might have important repercussions."

QUESTION 9

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

The Council agrees that it is appropriate to require members to give a fresh undertaking to observe the revised Code of Conduct following its adoption by the authority of which they are a member. The two month period for such undertakings was applied in 2001, when the Code of Conduct was first adopted by each authority and is perfectly reasonable.

QUESTION 10

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

The General Principles are supposed to be the enduring principles which underlie the Code. As such they should not be changed unless there are overriding reasons for doing so. Whilst this exhortation is clear well-intended, it is much wider than the Members' Code of Conduct, which is supposedly limited to criminal conduct which relates in some manner to the member's position as a member. In addition, the core principle is already substantially covered by General Principles 2 (Honesty and Integrity) and 8 (Duty to uphold the Law). Accordingly the Council is of the view that adding a general and unrestricted Principle of not engaging in criminal conduct is unnecessary.

QUESTION 11

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

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

QUESTION 12

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

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

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

Note that the General Principles are currently drafted in the third person whereas the suggested new General Principle is drafted in the second person. Clearly the drafting should be consistent.