

<b>REPORT OF:</b>	HEAD OF CORPORATE DEVELOPMENT
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<b>TO:</b>	STANDARDS COMMITTEE
<b>DATE:</b>	13TH MARCH 2006

<b>AGENDA ITEM NO:</b>		<b>WARD(S) AFFECTED:</b>	ALL
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<b>SUBJECT:</b>	REVIEW OF THE CODE OF CONDUCT AND THE NEW ETHICAL FRAMEWORK
<b>PURPOSE OF THE REPORT:</b>	TO REPORT ON THE GOVERNMENT'S RESPONSE TO THE STANDARDS BOARD FOR ENGLANDS RECOMMENDATIONS FOR THE REVIEW OF THE CODE OF CONDUCT FOR MEMBERS AND TO THE GRAHAM COMMITTEE ON STANDARDS OF CONDUCT ON PUBLIC LIFE PROPOSALS FOR A REVIEW OF THE NEW ETHICAL FRAMEWORK.
<b>RECOMMENDATION:</b>	
1. To note the report.	

## Background

1. The Office of the Deputy Prime Minister has now published the Government's response to the Standards Board for England's recommendations for the review of the Code of Conduct for Members, and to the Graham Committee on Standards of Conduct on Public Life's proposals for a review of the New Ethical Framework. This report sets out the changes which are now proposed by the Government.
2. The changes to the New Ethical Framework will require an Act of Parliament but the Government intends to include the proposed changes in the next Local Government Bill. These changes would include:
  - Parish Councils would remain subject to the Code of Conduct
  - All standards complaints against Councillors would be made to the Monitoring Officer, rather than to the Standards Board
  - Local authorities would refer up to the Standards Board complaints which they felt unable to investigate or which their Standards Committee would not be able to determine, for example because they related to allegations of very serious misconduct
  - The Standards Board would concentrate on monitoring and improving the effectiveness of the system and investigating only the most serious allegations
  - It would be mandatory that the Chairman of Standards Committees and Sub-Committees should be co-opted independent members
  - The parallel Code of Conduct for Officers should be introduced
  - Politically restricted posts will be retained

## **Main Proposed Changes to the Code of Conduct for Members**

3. The main proposed changes to the Code of Conduct for Members, which can be effected by secondary legislation and may therefore be introduced rather earlier, are as follows:
- No new “offence” of making a false or malicious complaint
  - The General Principles should form a preamble to the Code of Conduct
  - The requirement for members to report other members to the Standards Board should be deleted
  - A new “offence” of bullying should be added to the Code of Conduct
  - The Code of Conduct should contain an exception for disclosure of confidential information where such disclosure was in the public interest
  - Outside official duties, only unlawful conduct should be regarded as likely to bring the member’s office of authority into disrepute
  - The “offence” of misuse of public resources should be limited to serious misuse, and the Code of Conduct should define “inappropriate political purposes.”
  - The range of interests which require to be registered should be reduced
  - The Code should redefine “friend” as “close personal associate”
  - Interests arising from membership of another public body, a charity or local pressure group, should not prevent members from discharging their representative role
  - Standards Committees should have wider discretion to grant dispensations.
  - The current £25 threshold for declaration of gifts and hospitality should be retained and the register of gifts and hospitality should be made public

## **Review of the New Ethical Framework**

4. The Graham Committee on Standards in Public Life made recommendations on reviewing the conduct regime for local authority members. The Government has now confirmed its support for the broad thrust of the Committee’s recommendations, namely that there should be a further localisation of the system, to give local authorities greater ownership of the system, but with the Standards Board for England continuing to have a strong role strategic in providing guidance and support, and promoting best practice on the handling by local authorities of allegations of misconduct. The role of independent co-opted members of Standards Committees should be re-inforced, and the code of Conduct should be simplified and made easier to understand and operate at local level.

5. In more detail, the Government’s response is as follows:

**(a) Parish Councils would remain subject to the Code of Conduct**

The role of Parish Councils, particularly in the planning process, is such that the Government concludes that Parish Councils should remain subject to the Code of Conduct.

**(b) All standards complaints against Councillors would be made to the Monitoring Officer, rather than to the Standards Board**

Contrary to the view of the Graham Committee, the Government has concluded that the initial assessment of allegations - to determine whether they relate to the Code of Conduct, whether they merit investigation and, if so, by whom – should be undertaken by local authorities’ Standards Committees.

In order to achieve this, it is likely that the initial complaint would now have to be sent to the Monitoring Officer rather than to the Standards Board, as the Standards Board would otherwise merely act as postman. The Monitoring

Officer would then report the complaint to the Standards Committee, which would have to undertake the preliminary steps currently undertaken by the Standards Board, namely to decide:

- (i) whether the complaint appeared to disclose a failure to observe the Code of Conduct;
- (ii) whether the complaint merited investigation;
- (iii) whether the complaint was of such a serious nature that the investigation should be carried out by the Standards Board rather than arranged locally by the Monitoring Officer.

The Standards Board would clearly have to issue clear guidance as to how these functions should be conducted. Such decisions would presumably be taken by the Standards Committee on the advice of the Monitoring Officer, and have to be conducted in such a manner that there was no prejudice to the Standards Committee's role of conducting a local hearing and finally determining the complaint. The eventual legislation will also have to address whether a complainant would have an appeal to the Standards Board against a local decision not to investigate a complaint. This new role of receiving and undertaking the evaluation of all complaints will clearly require additional resource.

The Government has also rejected the recommendation of the Graham Committee that a member against whom an allegation has been made should be informed of the complaint before the initial sieving process is undertaken. In their view, if the initial sieving process is to be undertaken promptly, there is no opportunity to accommodate notification to, or representations from, the member.

(c) **Local authorities would refer up to the Standards Board complaints which they felt unable to investigate or which their Standards Committee would not be able to determine, for example because they related to allegations of very serious misconduct**

The Standards Board would retain the capacity to investigate complaints which were referred up to it by Standards Committees. Such references of complaints would presumably be limited by the legislation to allegations where the alleged misconduct was so serious that it would, if proved, require a sanction in excess of that available to the local Standards Committee, or where the local Standards Committee was of the opinion that it could not fairly investigate or determine the matter. This raises the question as to whether the maximum sanction available to local Standards Committees should be increased from the present 3 months' suspension. It is worth noting that Standards Committees in Wales have since 2002 been able to impose 6 months' suspension, and this has not apparently caused any problems. Without such a change, the number of cases which can be dealt with locally will remain limited.

The Government's response makes reference to the possibility of introducing local mediation and settlement of complaints. The conduct of investigations and hearings is expensive, especially for those authorities with numerous Parish and Town Councils. In a significant number of instances, particularly those relating to failure to treat with respect or those which relate to failure to disclose personal interests, but where the failure could not have affected the end decision, the complainant may be happy to receive and acknowledgement of error and an apology. If the initial complaint comes to the Monitoring Officer, there may be an opportunity to effect such amicable local resolution, but that opportunity needs to be conducted within a clear statutory framework, and so needs to be built into the new legislation.

(d) **The Standards Board would concentrate on monitoring and improving the effectiveness of the system and investigating only the most serious allegations**

The Government proposes that each Standards Committee should be required to set targets for the time taken to undertake each stage of the process and to publish an annual report on their performance against those targets. The Standards Board would then be able to compare the performance of Standards Committees, to provide targeted advice and support to those Standards Committees and Monitoring Officers who were struggling with the new responsibilities and would be given a reserve power to withdraw the right of the local Standards Committee to determine cases locally. The Standards Board would provide for a minimum level of training for all members of Standards Committees.

The strategic and supporting role of the Standards Board is to be welcomed, provided that it does not become over-regimented or an undue burden on Monitoring Officers and Standards Committees. In particular, the monitoring system must take account of quality, in terms of time taken to resolve complaints locally and to ensure that all parties have the opportunity to participate fully in the process, rather than just the speed with which complaints are determined. Further, the introduction of this role must be matched with a reduction in the focus of CPA on these issues of corporate governance, if duplication is to be avoided. Given the limited sanctions available to local Standards Committees and the potential for highly contentious allegations, it is essential that the Standards Board retains its own investigation capability.

The Government is considering how authorities could be encouraged to work together, citing the possibility of Joint Standards Committees on a County-wide basis or between unitary authorities.

(e) **It would be mandatory that the Chairman of Standards Committees and Sub-Committees should be co-opted independent members**

Whilst an independent chairman has a particular role in ensuring that hearings are conducted in a fair and non-partisan manner, there is less of a case for an independent chairman of Standards Committee when it is not conducting a hearing, for example when reviewing corporate governance arrangements or determining procedures. It may therefore be appropriate to legislate that all hearings be conducted by Sub-Committees of Standards Committees with an independent Chairman, but to leave the chairmanship of the full Standards Committee to local discretion.

The Government has rejected the recommendation of the Graham Committee that Standards Committees should have a majority of independent members, recognising the important roles of elected members in securing local ownership of the process and providing practical experience. Similarly, the Government has decided to retain the requirement for Parish and Town Council representatives on Standards Committees of District and Unitary Authorities with Parish or town Councils within their areas, and on Standards Sub-Committees when dealing with Parish or Town Council matters.

(f) **The parallel Code of Conduct for Officers should be introduced**

The Local Government Act 2000 made provision for the Government to prescribe a Code of Conduct for Officers which would be automatically incorporated into officers' contracts of employment and enforced through the authority's disciplinary procedures. Such a Code was introduced in Wales in 2001, but has yet to emerge in England. The Government now confirms that it is its intention to proceed with such a Code, but that it will consult further on a

detailed draft Code following on from any amendments to the Code of Conduct for Members.

Such a Code for officers extends the New Ethical Framework to officers. It needs to dovetail with the Code of Conduct for Members, for example so that the requirement for officers to act impartially matches the requirement that members do not seek to compromise the impartiality of officers. But the six year delay in introducing the Code for officers in England is hard to justify.

**(g) Politically restricted posts will be retained**

Under the Local Government and Housing Act 1989, senior officers in local authorities are prohibited from participating in certain party-political activities. These restrictions apply automatically to Chief and Deputy Chief Officers, and officers above a certain salary level, but individual officers have been able to apply to an Independent Adjudicator for exemption from these restrictions. The Government proposes to retain such restrictions on party political activity, but to transfer the responsibility for considering applications for exemption from the Independent Adjudicator to local Standards Committees. At the same time, authorities are permitted to appoint up to three political assistants, whose function is specifically to support individual party groups on the authority. The Government now proposes to standardise the salaries of such political assistants at a scale of SCP 44 to 49.

**Review of the Code of Conduct**

6. The Government has resisted requests for the abolition of the Code of Conduct, and has accepted all the recommendations of the Standards Board in respect of the amendment of the Code of Conduct.. The proposed changes are not particularly radical, but in a number of respects the exact intentions are far from clear. The main proposed changes to the Code of Conduct for Members can be effected by secondary legislation and may therefore be introduced relatively sooner than some of the structural changes which require an Act of Parliament. The principal proposed changes are as follows:

**(a) The Code should be made clearer and simpler**

The Government and the Standards Board have yet to demonstrate how this can be achieved.

**(b) No new “offence” of making a false or malicious complaint**

Whilst the Government condemns those who make frivolous or vexatious complaints, it does not support creating a new “offence” of making a vexatious complaint. Standards Committees, through training and otherwise, should discourage the making of vexatious complaints.

**(c) The General Principles should form a preamble to the Code of Conduct**

The Government proposes that the General Principles should remain as at present, and should be included as a preamble to the Code of Conduct. The General Principles are positive aspirations, in contrast to the identification of unacceptable conduct in the Code of Conduct. The two are therefore written from different directions and for different purposes. It is important that, if the General Principles are to be printed with the Code, it should be absolutely clear that a failure to meet the aspirations of the General Principles does not of itself amount to a breach of the Code of Conduct.

(d) **The requirement for members to report other members to the Standards Board should be deleted**

The Government supports the Standards Board's view that this reporting requirement encourages frivolous and vexatious complaints. Once the initial sieving function is passed to Standards Committees it makes sense for complaints to go in the first instance direct to the Monitoring Officer, but the Government does not propose to establish a new duty to report a matter to the Monitoring Officer. It remains to be seen how the changes will accommodate the role which some Monitoring Officers have adopted, of making a formal complaint to the Standards Board on behalf of the authority.

(e) **A new "offence" of bullying should be added to the Code of Conduct**

Currently, bullying cases are dealt with as failure to treat with respect, conduct likely to bring the member or authority into disrepute, or seeking to compromise the impartiality of the officer. A substantial number of bullying cases have been determined satisfactorily under these provisions. But the Government has a prior commitment arising from the ODPM convened National Taskforce on Bullying and Harassment in Local Government. Accordingly, the Standards Board recommended the inclusion of a new "offence" of bullying, wide enough to cover both patterns of bullying behaviour and single incidents of bullying.

In their report, the Standards Board referred to the ACAS definition of bullying<sup>1</sup>, but this is based upon a course of conduct, and upon an intention to denigrate the victim, whereas much bullying arises not out of an intent to denigrate, but simply a failure to respect the victim. Accordingly, the ACAS definition is not an appropriate definition for this purpose.

(f) **The Code of Conduct should contain an exception for disclosure of confidential information where such disclosure was in the public interest**

This follows from the Dimoldenberg case, where the Case Tribunal recognised that there could be a public interest defence to a complaint of disclosure of confidential information, in accordance with Article 10 of the Human Rights Act 1998. Much will depend on how the Code is revised to apply this test.

As a further point, the Government is separately proposing to amend the Local Government Act 1972 to bring the definitions of "exempt" and "confidential" information, access to which may or must be denied to the press and public, into line with the exemptions in the Human Rights Act and the Data Protection Act. These changes would transfer significant categories of information, particularly personal information relating to the member, from "exempt" to "confidential" and therefore nullify the intention that standards hearings should be held in public unless there were over-riding private interests which could only be protected by holding the hearing in private.

(g) **Outside official duties, only unlawful conduct should be regarded as likely to bring the member's office or authority into disrepute**

The Government has accepted the Standards Board's recommendation that the "offence" of conduct likely to bring the office or authority into disrepute

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<sup>1</sup> "Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; and abuse or misuse of power or authority to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress."

should continue to apply to conduct outside official duties, but only where the conduct would be regarded as unlawful.

Allowing members who are guilty of serious criminality, such as assault or false claiming of housing benefits, to remain in office, at least until the electorate have the opportunity to remove them from office at the next local elections, clearly reflects upon the credibility of local government as a whole and necessitates a mechanism for removing them from office. The difficulty is how to define what conduct merits such intervention, and unfortunately the Standards Board failed to define what it meant by “unlawful” conduct. The term “unlawful” can encompass breach of civil law as well as breach of criminal law. Criminal activity does not necessarily lead to prosecution. Civil liability, especially arising from dishonesty may strongly indicate unsuitability for public office and adversely affect the credibility of the authority. The same conduct may give rise to both criminal prosecution and civil liability, and at the lower end many actions which were previously criminal are now being re-classified as administrative, leading to civil penalties.

- (h) **The “offence” of misuse of public resources should be limited to serious misuse, and the Code of Conduct should define “inappropriate political purposes.”**

The present provisions of the Code in respect of the misuse of Council resources for party political purposes are acknowledged to be poorly drafted, but there is less agreement on what constitutes such an inappropriate political purpose.

In the absence of an agreed definition, the Standards Board recommended that authorities should develop local protocols setting out what members were allowed to use Council resources for, and what they were not permitted to use them for. Relatively minor breaches should be dealt with locally, but serious breaches should continue to be dealt with nationally. Whilst endorsing this broad recommendation, the Government has yet to provide any definition of such acceptable or unacceptable political purpose.

- (i) **The range of interests which require to be registered should be reduced**

Whilst the Government has endorsed this recommendation, the Standards Board has yet to make detailed proposals as to how it can be achieved without weakening the intention of the Code that potential conflicts of interest should be flagged up and made public. However, the Government does endorse the proposal that sensitive employment (e.g. in the security services) should still have to be notified to the Monitoring Officer but would not have to appear on the public register.

- (j) **The Code should redefine “friend” as “close personal associate”**

The use of the word “friend” has given rise to confusion, although the Standards Board has been clear that “friend” was to be contrasted with “colleague” or “acquaintance”. The use of the phrase “close personal associate” does not entirely eliminate this difficulty, and we will have to continue to rely on case decisions to exemplify what is meant by this provision.

- (k) **Interests arising from membership of another public body, a charity or local pressure group, should not prevent members from discharging their representative role**

The Code currently provides that, where a member has a prejudicial interest by reason of membership of another relevant local authority of which he/she is a member, a public authority in which he holds a position of general control

or management, or a body to which he has been appointed or nominated by the authority as the authority's representative, the member may elect to treat that interest as merely personal, thus enabling the member to speak and vote on the matter.

The Government endorses the recommendation of the Standards Board that such interests should now only be treated as prejudicial where the matter under consideration would have a direct impact on the body concerned (for example a grant of money) or where the member is involved in a regulatory decision, such as planning or licensing, but that even in such instances the member should still be allowed to speak to the matter and answer questions before withdrawing before the debate and any vote. This would also apply where the member's interest arises from membership of a charity or lobby groups, in order to enable a member who has campaigned on a community issue, or participated in a local residents' association to continue to represent their constituents, although the rules on predetermination would prevent their participation in the actual debate or vote on the matter.

A further issue arises where a member is conflicted out because of a local issue which gives them a prejudicial interest, such as a controversial local development proposal. The Court of Appeal in *R v North Yorkshire CC ex p Richardson* confirmed the plain wording of the Code of Conduct, namely that a member who had a prejudicial interest must withdraw from the meeting. The result of this was that such a member was precluded from representing his/her constituents at the meeting. The current Code of Conduct ameliorates this by providing that, where a matter affects all the Council Tax payers, ratepayers or inhabitants of the authority's area equally, it does not constitute even a personal interest for the member. Such an exemption is more relevant at Parish and Town Council level, where the relevant area is smaller. The Government now endorses the recommendation of the Standards Board that, whilst such local matters would still give rise to a requirement to disclose a personal interest, it would not be a prejudicial interest where it affected the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area which the member represents. In cases where members are appointed by one authority to another, such as members of combined Police or Fire authorities, the same rule would apply in respect of the appointing authority's area.

The Government's response does not clarify whether there is any intention to give members a wider right of audience to represent their constituents, even where they are precluded from taking part in the debate or vote by reason of a continuing prejudicial interest.

**(l) Standards Committees should have wider discretion to grant dispensations.**

The present rules only allow for dispensations to be granted where 50% or more of the members of the decision-making body are conflicted out by reason of prejudicial interests. It is proposed to give Standards Committees the power to permit individual members with prejudicial interests to speak, in order to represent their constituents, but not to participate in the debate or to vote.

**(m) The current £25 threshold for declaration of gifts and hospitality should be retained and the register of gifts and hospitality should be made public**

The Local Government Act 2000 failed to provide for the register of gifts and hospitality to be made public. This is now to be rectified. There is a proposal that a series of small gifts from the same source should require to be registered where the aggregate value exceeds £25.



(n) **Miscellaneous amendments**

There are a series of detailed drafting points which the Standards Board has identified:

- (i) The definition of “relative” needs to be up-dated to recognise civil partnerships;
- (ii) The definition of “meeting” should make it clear whether it applies to site visits and public meetings organised by the authority;
- (iii) The definition of a prejudicial interest is very similar to the common law definition of “apparent bias”. Given that one of the most difficult issues for members to grapple with is the overlap between the Code provisions leading to sanctions against members and the grounds for judicial review of the authority’s decision, for example on the basis of bias, predetermination or predisposition, it would be advantageous to try to align these provisions.

# The General Principles

**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.

## **THE EMPLOYEES' CODE OF CONDUCT**

### **Honesty, Integrity, Impartiality and Objectivity**

1. An employee must perform his duties with honesty, integrity, impartiality and objectivity.

### **Accountability**

2. An employee must be accountable to the authority for his actions.

### **Respect for Others**

3. An employee must –
  - a) treat others with respect;
  - b) not discriminate unlawfully against any person; and
  - c) treat members and co-opted members of the authority professionally.

### **Stewardship**

4. An employee must –
  - a) use any public funds entrusted to or handled by him in a responsible and lawful manner; and
  - b) not make personal use of property or facilities of the authority unless properly authorized to do so.

### **Personal Interests**

5. An employee must not in his official or personal capacity –
  - a) allow his personal interests to conflict with the authority's requirements; or
  - b) use his position improperly to confer an advantage or disadvantage on any person.

### **Registration of Interests**

6. An employee must comply with any requirements of the authority –
  - a) to register or declare interests; and
  - b) to declare hospitality, benefits or gifts received as a consequence of his employment.

### **Reporting procedures**

7. An employee must not treat another employee of the authority less favourably than other employees by reason that that other employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the authority has for reporting misconduct.

### **Openness**

8. An employee must –
  - a) not 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 authorized to give it, or unless he is required by law to do so; and
  - b) not prevent another person from gaining access to information to which that person is entitled by law.

### **Appointment of staff**

9.
  - (1) An employee must not be involved in the appointment of any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.
  - (2) In this paragraph –
    - a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, stepdaughter, 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 (a) above means a member of a couple who live together.

**Duty of trust**

10. An employee must at all times act in accordance with the trust that the public is entitled to place in him.

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Background Papers:

Document2