



Epping Forest District Council

STANDARDS COMMITTEE **Monday, 8th December, 2008**

Place: Civic Offices, High Street, Epping
Room: Committee Room 2
Time: 7.30 pm
Committee Secretary: G Lunnun - The Office of the Chief Executive
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Ms M Marshall (Chairman), G Weltch and M Wright
District Councillors S Murray, B Rolfe, Mrs P Smith,

Parish/Town Council Representatives:

Councillors Mrs D Borton, J Salter, B Surtees

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- 1. APOLOGIES FOR ABSENCE**
 - 2. COUNCILLOR JASON SALTER**

To welcome Councillor Jason Salter recently appointed as the third parish/town council representative on the Committee.

- 3. MINUTES (Pages 5 - 26)**

To approve as a correct record the minutes of the meeting held on 2 July 2008 (attached).

- 4. DECLARATIONS OF INTEREST**

To declare interests in any item on the agenda.

- 5. REVISED CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS - CONSULTATION (Pages 27 - 66)**

Recommendation:

To agree a response to those parts of the consultation paper concerning proposals for revising the Local Authorities (Model Code of Conduct) Order

2007 and the Relevant Authorities (General Principles) Order 2001.

(Monitoring Officer) This consultation paper is one of a series of Communities in Control consultation documents following the publication of the Local Government Empowerment White Paper, *Communities in Control: Real People, Real Power*, on 9 July 2008, and builds on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.

This paper invites views on proposals for revising the Local Authorities (Model Code of Conduct) Order 2007 and the Relevant Authorities (General Principles) Order 2001. It also seeks views on the proposed introduction of a model code of conduct for local government employees although this part is not an issue for this Committee. Particular questions on which comments are sought are summarised at Annex A to the paper.

Copies of the consultation paper have been sent to all principal local authorities, parish councils and other organisations and individuals who have a particular interest in these issues

6. DETERMINATION OF ALLEGATIONS RELATING TO THE CONDUCT OF MEMBERS (Pages 67 - 68)**Recommendation:****To note guidance issued by the President of the Adjudication Panel.**

(Monitoring Officer) One option available to a standards committee after considering an investigating officer's report is to refer the matter to the Adjudication Panel for England for determination by a tribunal.

The President of the Adjudication Panel has issued guidance on the circumstances in which the Adjudication Panel will consider accepting a reference from a standards committee (attached).

7. DISPENSATIONS (Pages 69 - 76)**(a) Waltham Abbey Town Council – Applications for Dispensation****Recommendations:**

- (1) To confirm the minutes of the Dispensations Sub-Committee held on 2 July 2008; and**
- (2) To note the steps taken by the Waltham Abbey Town Council following the granting of dispensations.**

(Monitoring Officer) At its meeting on 24 April 2008, the Committee authorised a Sub-Committee comprising Ms M Marshall, G Weltch and Councillor Mrs D Borton to determine applications for dispensation from 10 Waltham Abbey Town councillors.

The Sub-Committee met on 2 July 2008 and the minutes of that meeting are attached.

On 15 September 2008, the Town Clerk of Waltham Abbey Town Council subsequently advised that a Special Meeting of the Town Council had been held on 17 July 2008 to co-opt a member to fill the vacancy on the Town Council. All members in attendance had declared personal and prejudicial interests as at least one of the applicants was known to each of them. Taking account of the dispensations granted by the Sub-Committee the Town Council members proceeded to interview the four applicants and held a ballot to select a co-opted member. Mr M Reilly was duly co-opted to the Town Council to fill the vacant seat in the Honey Lane ward.

(b) Dispensation – Application Form

To consider the attached draft pro forma for submission of future dispensation applications.

8. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS - CURRENT POSITION (Pages 77 - 78)

(Monitoring Officer) To note the attached schedule.

9. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2008/09 provides for meetings of the Committee on 27 January and 14 April 2009

Additional meetings can be arranged as and when required by the Committee.

10. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

Agenda Item No	Subject
Nil	Nil

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Standards Committee **Date:** 2 July 2008

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 7.30 - 9.04 pm

Members Present: Ms M Marshall (Independent Member) , G Weltch (Independent Member), M Wright (Independent Member), Councillor B Surtees (Parish or Town Council Deputy), Councillor Mrs D Borton (Parish or Town Council Representative), Councillor B Rolfe (Epping Forest Council Appointee), Councillor Mrs P Smith (Epping Forest Council Appointee)

Other Councillors:

Apologies:

Officers Present: G Lunnun (Allegations Determination Manager), C O'Boyle (Monitoring Officer) and I Willett (Deputy Monitoring Officer)

1. CHAIRMAN OF THE COUNCIL

The nomination of Ms M Marshall as Chairman of the Committee having been formally moved and seconded, it was:

RESOLVED:

That Ms M Marshall be elected Chairman of the Committee for the municipal year 2008/09.

2. APPOINTMENT OF VICE-CHAIRMAN

The Committee was asked to consider whether it wished to appoint a Vice-Chairman for the coming year. A Vice-Chairman had not been appointed in the past but it was considered prudent to make an appointment to cover for the Chairman when necessary. The Committee noted that such an appointment would require a change to the Council's Constitution and would therefore be subject to Council approval.

The nomination of Mr G Weltch as Vice-Chairman of the Committee having been formally moved and seconded, it was:

RESOLVED:

That, subject to Council approval, Mr G Weltch be appointed Vice-Chairman of the Committee for the municipal year 2008/09.

3. MINUTES

The Chairman welcomed Councillor Rolfe to his first meeting of the Committee and acknowledged the contribution to the work of the Committee which had been made by Councillor Mrs J H Whitehouse.

RESOLVED:

That the minutes of the meeting of the Committee held on 24 April 2008 be taken as read and signed by the Chairman as a correct record.

4. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

5. LOCAL ASSESSMENT OF ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

The Committee considered a report on the local initial assessment of complaints of misconduct by members. Previously a complaint of misconduct by a member had been submitted to the Standards Board for England (SBE), and the referrals unit of the SBE had determined whether the allegation appeared to disclose a failure by a member to comply with the authority's Code of Conduct and whether the allegation merited investigation. From 8 May 2008, all such complaints were now to be made to the Standards Committee of the authority with an expectation that each allegation be would assessed within 20 working days of receipt.

The Committee considered the issues which needed to be addressed in order to meet the new requirements.

Members noted that the legislation required the establishment of a Sub-Committee (the SBE had advised that this should be known as the "Assessments Sub-Committee") which would undertake the initial assessment and decide whether the complaint showed an apparent failure to comply with the Code of Conduct and, if so, whether that complaint merited investigation or other action. If the Assessments Sub-Committee decided to take no action in respect of an allegation, the complainant then had 30 days within which to request the authority to review that decision. The Act required the setting up of a second Sub-Committee (the "Reviews Sub-Committee) to conduct that review. No member could sit on the Reviews Sub-Committee in respect of complaint if they had served on the Assessments Sub-Committee for the same complaint. If the matter was then referred for investigation a hearing would be held. The SBE had recommended that such hearings should be held before a Sub-Committee (a "Hearings Sub-Committee"). Members noted that whilst the legislation prohibited any member from sitting on both the Assessments and Reviews Sub-Committee on the same case there was no similar statutory prohibition in respect of the Hearings Sub-Committee. In addition the SBE had advised that if a member had been involved in the case either at the Assessments Sub-Committee or the Reviews Sub-Committee stage there was no reason why they should be precluded from serving on the Hearings Sub-Committee.

The Committee considered the composition of the required Sub-Committees taking account of the need for:

- (a) at least 25% of each Sub-Committee to be independent members, one of whom must be present to chair the meeting;
- (b) at least one elected member of the District Council to be present at each meeting; and
- (c) at least one member to be a parish or town council representative if the Sub-Committee was dealing with a complaint in respect of the conduct of a councillor in the capacity of a local council member.

The Committee considered terms of reference for the Assessments Sub-Committee and the Reviews Sub-Committee.

The Committee determined that having regard for the need to call meetings of the Assessments Sub-Committee urgently to comply with the 20 day time limit the membership of such Sub-Committees should be determined by the Monitoring Officer in consultation with the Chairman of the Standards Committee on an ad hoc basis. Members considered this to be preferable to a fixed membership which could make it more difficult to convene a meeting quickly in the event of absence of a member for any reason. Members noted that any review of a decision by the Assessments Sub-Committee had to be conducted within three months of a request being made. Also a Hearings Sub-Committee had to be held within three months of receipt of the investigation report. Acknowledging that there was more flexibility to arrange such meetings on a date to suit the available members, the Committee determined that the arrangements for appointing the Reviews and Hearings Sub-Committee meetings should be conducted in the same way as for the Assessments Sub-Committee.

The Deputy Monitoring Officer reported that the legislation provided for authorities to appoint joint committees to discharge all or any of their functions in relation to complaints without maintaining their own separate Sub-Committees. Members noted that such joint working might be more acceptable in terms of the initial assessment and the review, rather than the actual hearings which might benefit from a more "local" approach. However, the regulations bringing these provisions into force had not yet been made.

The Committee considered the steps to be taken to notify a councillor of the receipt of a complaint taking account of advice of the SBE.

The Deputy Monitoring Officer reported that there was no formal process for local resolution of complaints in the legislation, although regulations enabled the Assessments Sub-Committee to propose conciliation or some other course as an alternative to a formal investigation. However, in a situation where the member concerned had acknowledged that his/her conduct was at fault and had apologised, and the complainant had accepted that the complaint should not proceed to formal investigation, the Assessments Sub-Committee could determine that no further action was required. In order to cover this situation, the Committee considered the adoption of a local protocol authorising the Monitoring Officer to seek such local resolutions in appropriate cases. The Committee noted that SBE experience had been that the large number of complaints received did not relate to the Code of Conduct for members. The legislation provided that the function of initial assessment of complaints had to be conducted by the Standards Committee or by a Sub-Committee and did not allow for delegation of this function to the Monitoring Officer. The Committee agreed that where the Monitoring Officer identified that a complaint had clearly related to a request for an additional service from the authority or as a statement of policy disagreement she should be authorised to respond to the

complainant on how the matter could be dealt with, only reporting to the Assessments Sub-Committee if the complainant insisted that the matter be dealt with as a Standards complaint.

The Deputy Monitoring Officer reported that there was nothing in the legislation which required a complaint to be signed by the complainant. Members noted that the SBE had entertained some anonymous complaints but that this had given rise to concern. The Committee considered whether anonymous complaints should be entertained.

The Committee noted that it was not uncommon that a single event gave rise to similar complaints from a number of different complainants. The legislative position was that each separate complaint had to be considered and that even where a meeting of the Assessments Sub-Committee had previously decided that no action be taken upon an identical complaint, a subsequent complaint had to be considered by the Sub-Committee.

The Deputy Monitoring Officer emphasised that the Assessments Sub-Committee had to decide whether an allegation appeared to disclose a failure to comply with the Code of Conduct and whether it merited investigation. He suggested that where the Sub-Committee had only a letter of complaint it would not always be easy to assess whether there was any substance to the allegation. In some situations there might be information which might substantiate, or contradict the allegation and so make it easier for the Sub-Committee to determine whether the complaint had any substance. The Committee considered whether the Monitoring Officer should be authorised to check publicly available information between receipt of the complaint and the meeting of the Assessments Sub-Committee in order to assist the process.

The Committee considered whether meetings of the Assessments, Reviews and Hearings Sub-Committees should be held in public or private. The Committee also considered aspects of the Data Protection Act and the Freedom of Information Act in relation to complaints about members. Attention was drawn to the requirements in relation to notification of initial assessment and review of initial assessment decisions. Members noted that previously where the Monitoring Officer's investigation had concluded that there had not been a failure to observe the Code of Conduct, the Monitoring Officer's report had to be submitted to the Standards Committee for a decision on whether it accepted that conclusion, or whether it wished to conduct a formal hearing. In cases where the Monitoring Officer's investigation had concluded that there had been a failure to observe the Code of Conduct, the previous regulations had provided for the matter to proceed directly to a local hearing. Members noted that the new regulations added an extra step. The Monitoring Officer's report now had to be reported to the Standards Committee or a Sub-Committee to decide what action should be taken before an actual hearing could be arranged. Members considered the process for undertaking this step.

Members noted that appropriate publicity had already been given to the new arrangements. The Committee also noted the resource implications of undertaking the new procedures.

RESOLVED:

Assessments Sub-Committee

- (1) That an Assessments Sub-Committee comprising three members of the Standards Committee be established to carry out initial assessments of complaints;

(2) That the terms of reference for the new Sub-Committee be approved as set out in Appendix 1 to these minutes and reported to the Council for noting;

Reviews Sub-Committee

(3) That a Reviews Sub-Committee be established comprising three members of the Standards Committee to carry out reviews of decisions by the Assessments Sub-Committee;

(4) That the terms of reference of the new Sub-Committee be approved as set out in Appendix 2 to these minutes and reported to the Council for noting;

Standards Committee

(5) That a report be submitted to the Council recommending:

(a) that the number of District Council members of the Standards Committee be increased to three and an appointment to the additional place be made at the Council meeting;

(b) that the number of parish/town council representatives be increased to three, with the present deputy becoming one of the members;

Hearings Sub-Committee

(6) That Hearings Sub-Committees be convened as and when required;

Appointments to Assessments Sub-Committee, Reviews Sub-Committee, and Hearings Sub-Committee

(7) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee make appointments to the Assessments, Reviews and Hearings Sub-Committees when required and in accordance with statutory requirements;

Joint Working

(8) That further consideration be given to a policy for joint working with other local authorities when further Government regulations are published;

Notifications to Councillors and Complainants

(9) That the Monitoring Officer be authorised:

(a) to notify the relevant councillor of the receipt of a complaint, the name of the complainant and a summary of the complaint prior to the despatch of case details to the Assessments Sub-Committee, notification to include, where necessary any decision regarding confidentiality;

(b) to acknowledge receipt of allegations to complainants at the same time as notification under (9)(a) above;

(10) That the Monitoring Officer be required to consult the Chairman of the Standards Committee on any cases where delayed notification is appropriate;

Local Resolution of Complaints

(11) That the local protocol set out in Appendix 3 to these minutes be adopted to enable the Monitoring Officer to seek local resolution of complaints where possible in advance of an Assessments Sub-Committee meeting;

Assessment Criteria

(12) That the criteria for initial assessments of complaints as set out in Appendix 4 be approved;

Anonymous Complaints

(13) That, as a matter of policy, complaints made anonymously be not considered;

(14) That the Monitoring Officer be authorised, in consultation with the Chairman of the Standards Committee, to keep the identity of a complainant confidential where she feels that this would be in the public interest;

Pre-Investigation by the Monitoring Officer

(15) That the Monitoring Officer be authorised to obtain and supply to the Assessments Sub-Committee any publicly-available information which is considered helpful in the consideration of any complaints;

Meeting Arrangements – Assessments, Reviews and Hearings Sub-Committees

(16) That the Assessments and Reviews Sub-Committee meetings be held in private session unless there are exceptional circumstances which warrant the proceedings being held in public;

(17) That as a matter of policy, all meetings of the Hearings Sub-Committee be held in public session unless there are clear statutory grounds for its proceedings to take place in private session, subject in the case of a hearing where the member who is the subject of the complaint is not present, the officers ensuring that the decision is made known to that member prior to any media announcement of the decision;

Results of Investigations

(18) That the functions of determining whether to accept a finding by the Investigating Officer of no breach of the Code of Conduct or to proceed to a local hearing in cases where the finding is that a breach of the Code has been found be delegated to the Assessments Sub-Committee members who undertook the initial assessment with the Monitoring Officer sending them details by post and only calling a formal meeting of those members in the event of there not being unanimous support for the action recommended in the Investigating Officer's report;

Interim Arrangements

(19) That, pending the adoption of the revised Constitution for the Standards Committee and the appointment of additional members of the Committee, the Monitoring Officer, in consultation with the Chairman of the Standards Committee, be authorised to convene meetings of any Sub-Committee in compliance with statutory requirements when any complaint is received; and

Review of Arrangements

(20) That these arrangements be reviewed by the Standards Committee after a period of 12 months of operation.

6. CONSTITUTION - ARTICLE 9 - THE STANDARDS COMMITTEE - REVISIONS

The Committee considered a proposed revised Article 9 of the Council's Constitution reflecting the new duties.

RESOLVED:

That a report be submitted to the Council recommending adoption of the revised Article 9 attached as Appendix 5 to these minutes.

7. ADMINISTRATION OF THE LOCAL ASSESSMENT SCHEME

The Committee noted that the Standards Board for England had issued guidance on the administration of the local assessment scheme. In compliance with that guidance the new system had already been published:

- (a) on the Council's website;
- (b) by placing a public notice in the local newspaper;
- (c) by placing an article in the Council's own magazine, the Forester; and
- (d) by issuing a press release.

The Committee also noted that the Standards Committee and the Local Democracy web pages on the Council's website now included a link to a new page on councillor conduct which gave information about the scheme.

The Committee considered a suggested complaint form to be included on the website.

The Committee also noted that the Standards Board for England had set up a reporting system for local complaints. Local authorities' Standard Committees were required to submit a return at the end of each quarter on the number and types of complaints. The system would also enable the tracking of complaints and the results of the assessments, reviews, and hearings to be monitored.

RESOLVED:

- (1) That the steps being taken by the Local Assessment Officer to introduce the new procedures for dealing with complaints against councillors be noted;
- (2) That the notes accompanying the proposed complaint form be amended to reflect the views of the Committee; and
- (3) That the clerks of parish and town councils be advised of the new procedures and invited to contact District Council officers for clarification, if required.

8. DATES OF FUTURE MEETINGS

The Committee noted that the calendar for 2008/09 provided for meetings of the Committee on 15 July 2008, 13 October 2008, 27 January 2009 and 14 April 2009.

Members were advised that in the light of this additional meeting there was no business to be considered at the meeting scheduled for 15 July 2008.

RESOLVED:

That the meeting scheduled for 15 July 2008 be cancelled.

9. ASSESSMENTS SUB-COMMITTEE

The Committee was advised that there was a need to hold a meeting of the Assessments Sub-Committee as three complaints relating to two District Councillors had been received since the new procedures had come into force.

The Committee considered the make up of an Assessments Sub-Committee and the date for a meeting.

RESOLVED:

- (1) That arrangements be made for a meeting of the Assessments Sub-Committee comprising Mr M Wright (Chairman), Councillor Mrs P Smith and Councillor Mrs D Borton; and
- (2) That the meeting be held on 15 July 2008 commencing at 10.00 a.m.

CHAIRMAN

Terms of Reference of the Assessments Sub-Committee

1. Terms of Reference

- (a) The Assessments Sub-Committee is established to receive allegations that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:
 - (i) refer the allegation to the Monitoring Officer, with an instruction that she arrange a formal investigation of the allegation, or directing that she arrange training, conciliation or such appropriate alternative steps as permitted by Regulations;
 - (ii) refer the allegation to the Standards Board for England;
 - (iii) decide that no action should be taken in respect of the allegation; or
 - (iv) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.
- (c) Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:
 - (i) it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;
 - (ii) the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
 - (iii) the matter should be referred to the Adjudication Panel for determination.
- (d) Where the Sub-Committee resolves to carry out any of the actions set out in paragraph 1(b) or 2(c) above, the Sub-Committee shall state its reasons for that decision.

2. Composition of the Assessments Sub-Committee

- 2.1 The Assessments Sub-Committee shall comprise 3 members, of whom 1 shall be an independent co-opted member of the Standards Committee, and who shall chair the Sub-Committee, and at least 1 elected member of the District Council. When the Assessments Sub-Committee considers a matter relating to the conduct of a person as a Parish or Town Councillor, the Sub-

Committee shall include a Parish or Town Council representative who is a member of the Standards Committee.

- 2.2 The appointment of members to the Sub-Committee shall be carried out by the Monitoring Officer in consultation with the Chairman of the Standards Committee on an ad hoc basis.
- 2.3 No meetings of the Sub-Committee shall be held unless all three members are in attendance.

3. Frequency of Meetings

The Sub-Committee shall meet on an ad hoc basis as and when necessary.

Terms of Reference of the Reviews Sub-Committee

1. Terms of Reference

- 1.1 The Reviews Sub-Committee is established to review, at the request of a person who has made an allegation that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Assessments Sub-Committee that no action be taken in respect of that allegation.
- 1.2 Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Assessments Sub-Committee and shall then do one of the following:
- (a) refer the allegation to the Monitoring Officer, with an instruction that she arrange a formal investigation of the allegation, or specifying that she take an alternative action as permitted by Regulations;
 - (b) refer the allegation to the Standards Board for England;
 - (c) decide that no action should be taken in respect of the allegation; or
 - (d) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;
- and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.
- 1.3 Where the Sub-Committee resolves to carry out any of the actions set out in Paragraph 1(b) above, the Sub-Committee shall state its reasons for that decision.

2. Composition of the Reviews Sub-Committee

The Reviews Sub-Committee shall comprise 3 members, of whom 1 shall be an independent co-opted member of the Standards Committee, who shall chair the Sub-Committee and the other 2 shall be elected members of the District Council. Except when the Referrals Sub-Committee considers a matter relating to the conduct of a person as a Parish or Town Councillor, the Sub-Committee shall include a Parish or Town Council representative who is a member of the Standards Committee in place of one of the elected members of the District Council.

3. Frequency of Meetings

The Reviews Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Assessments Sub-Committee within 3 months of the receipt of the request for such a review from the person who made the allegation.

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Monitoring Officer Protocol

Guidance to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegation that a member of the Authority has failed to comply with the Code of Conduct

1. Receipt of Allegations

- 1.1 The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to her immediately upon receipt by the Authority.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- 1.3 Complaints shall only be considered where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in her opinion that would be in the public interest.

2. Notification of Receipt of Allegations

- 2.1 All relevant allegations must be assessed by the Assessments Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Assessments Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- 2.2 Following receipt of the allegation, and where the allegation appears to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly, and in any case in advance of the relevant meeting:
 - (a) acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessments Sub-Committee at its next convenient meeting;
 - (b) notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Assessments Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, she shall consult the Chairman of the Assessments Sub-Committee, or in her absence the Chairman of the

Standards Committee, and may then decide that no such advance notification shall be given;

- (c) collect such information as is readily available and would assist the Assessments Sub-Committee in its function of assessing the allegation;
- (d) seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- (e) place a report, including a copy of the allegation, such readily available information and her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Assessments Sub-Committee.

3. Local Resolution

- 3.1 Local resolution is not an alternative to reporting the allegation to the Assessments Sub-Committee, but should be regarded as a means of avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, she shall approach the member against whom the allegation has been made and ask whether she is prepared to acknowledge that her conduct was inappropriate, and whether she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action.
- 3.3 The Monitoring Officer should then report to the Assessments Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, where the member has acknowledged that her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Assessments Sub-Committee might take that into account when considering whether the matter merits investigation.

4. Review of Decisions not to Investigate

- 4.1 Where the Assessments Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Reviews Sub-Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Reviews Sub-Committee the information which was provided to the Assessments Sub-Committee in respect of the matter, the summary of the Assessments Sub-Committee and any additional relevant information which has become available prior to the meeting of the Reviews Sub-Committee.

5. Local Investigation

- 5.1 The Monitoring Officer will not personally conduct a formal local investigation.
- 5.2 It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Assessments Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include, the Deputy Monitoring Officer, another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.

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Epping Forest District – Standards Committee

Local Assessment of Complaints – Criteria

The Standards Committee will **not** investigate complaints that are:

- Malicious, relatively minor, politically motivated, trivial or tit for tat.
- Made anonymously.
- Contain no prima facie evidence of a breach of the Code.
- Where the complainant has not supplied enough information to justify a decision to refer the matter for investigation or to evidence their complaint or have supplied information of too general a nature from which to make a judgement to investigate.
- Where an investigation would serve no useful purpose or is not serious enough to warrant a sanction or where only an apology was appropriate.
- The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Subcommittee or the local Standards Committees and where no new relevant evidence has been submitted.
- Acts carried out in the Member's private life, when they are not carrying out the work of the authority or have not misused their position as a Member.
- About dissatisfaction with a council decision, about the way the Council conducts or records its meetings, the way the Council has or has not done something.
- Within the Council's complaints process.
- About someone who is no longer a member of either the District Council or a Town or Parish Council within the area, or is a member of another authority.
- More than 1 year has passed since the alleged conduct occurred.
- Not suitable for local investigation (see referral criteria below).
- Where alternative action such as training, mediation would be more appropriate.

The Standards Committee will refer the following cases to the Standards Board for England:

- Where the status of the member(s) being complained of would make it difficult to deal locally with the complaint. For example: Complaints concerning the Leader of the Council, Cabinet member or leading opposition members, Chairman or Standards Committee members.

- Complaints from the Chief Executive, Monitoring Officer or Service Director.
- Instances where a large number of key people are conflicted out or where the authority itself might be perceived to have an interest in the outcome of the case.
- Instances where there has been national attention, or where the Standards Committee feels that the matter turns on an important point of interpretation of the Code (a test case).
- Where there are other public issue considerations, exceptional circumstances or allegations of governance dysfunction that would make it difficult for the authority to deal with the case fairly or speedily.
- Where the Assessment Sub-committee, having undertaken their initial assessment, believes that the matter should be dealt with at Standards Board level.

ARTICLE 9 - THE STANDARDS COMMITTEE

9.01 Standards Committee

The Council will establish a Standards Committee, to be known as the Epping Forest District Standards Committee.

9.02 Composition

(a) Membership

The Standards Committee will comprise:

- 3 Members of Council
- 3 Independent co-optees
- 3 Parish/Town Council representatives

Terms of Office

Each independent member shall serve for three years and be eligible for re-appointment. The Parish representatives shall be nominated by the Association of Local Councils (Essex Branch) for a term of one year and be eligible for nomination for further terms of one year. District Council representatives shall be appointed for terms of one year and be eligible for re-appointment.

(b) Independent Members

Independent members (including the Parish representative or the Parish deputy) will be entitled to vote at meetings.

(c) Parish Members

At least one parish member must be present when matters relating to parish councils or their members are being considered.

(d) Chairing the Committee

The Chairman of the Committee shall be appointed by the Committee from among those members who are not members of the District Council or of any Parish or Town Council.

(e) Vice-Chairman of the Committee

The Vice-Chairman of the Committee shall be appointed by the Committee from among those members who are not members of the District Council or of any Parish or Town Council.

9.03 Role and Function - General

The Standards Committee will have the following general roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members;
- (b) assisting councillors and co-opted members 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 on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to councillors and co-opted members 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; and
- (h) adjudication on complaints regarding the operation of District Council protocols annexed to the Constitution.

9.04 Role and Function – Specific Responsibilities

The Standards Committee will have the following specific responsibilities under the Local Government Act 2000 (as amended):

- (a) Section 56A – proposals for the establishment of joint Standards Committees for two or more authorities, including the Epping Forest District Council;
- (b) Section 57A – initial assessment of written allegations of breaches of the Code of Conduct;
- (c) Section 57B – reviews of any decision under Section 57A not to act on an allegation;
- (d) Section 57C – information to be given to the subject of an allegation;
- (e) Section 64 – receipt of reports by Ethical Standards Officers which are deemed to assist the Committee in the conduct of its functions;
- (f) Section 66 - matters referred to the Monitoring Officer for investigation and to the Standards Committee for adjudication
- (g) Section 66A – references to the Adjudication Panel for action in respect of misconduct.
- (h) Section 66B – provision, on behalf of the Council, of information on allegations and action taken to the Standards Board for England;

In respect of these functions, the Standards Committee shall comply with advice and regulations from the Secretary of State and advice and guidance from the Standards Board for England.

9.05 Role and Functions – Politically Restricted Posts

The Standards Committee will have the following specific responsibilities under the Local Government and Housing Act 1989 (as amended):

- (a) Section 2(2) – consideration of inclusion of a post or posts in the list of politically restricted appointments;
- (b) Section 3A – grant and supervision of exemptions from political restrictions.

In exercising its powers and duties under this article, the Standards Committee shall comply with advice and regulations issued by the Secretary of State.

9.06 Operational Arrangements

Details of operational arrangements for the Standards Committee are set out below:

Sub Committees

Where the Committee establishes a Sub Committee for the purpose of carrying out any of its functions, the Committee must ensure that:

- (a) at least one of the independent members is a member of that Sub Committee;
- (b) at least one member of any of the Parish Councils for which the District Council are the responsible authority is a member of that Sub Committee when matters relating to those Parish Councils are being considered.

Meeting Frequency

A minimum of four meetings per year will be held with additional meetings as and when required.

Democratic Practice

Meetings will be held in public but with provision for private sessions where necessary and subject to a public explanation for excluding the public and press.

Exempt Business

The Council's Access to Information rules shall apply to the proceedings of the Committee or of any Sub Committee established by it.

9.07 Scope of Duties

The Standards Committee has the same functions in relation to Parish Councils and parish councillors as apply to the District Council and district councillors under this Article of the Constitution.

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Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation

October 2008

Department for Communities and Local Government: London
Page 28

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October 2008

Product Code: 08 LGSR 05557

ISBN: 978-1-4098-0549-6

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Chapter 1: The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments. Future consultation papers include a consultation on proposals to revise the code of recommended practice on local authority publicity, which is due to be published at the end of October. This paper invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. This paper also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which sets out the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees' ("the employees' code").

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May

2007, on the basis that the provisions of the members' code would be reviewed in light of early experience of its practical operation.

- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members' code in its application to members' conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members' code, including reconfiguring the members' code into two distinct sections, the first dealing with members' conduct in their official capacity, the second dealing with members' conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members' conduct in their non-official capacity.
- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

Who are we consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from local authority members, local authority monitoring officers, local government employees, national representative bodies, local government partners and trade unions. **The consultation period runs for 12 weeks to 24 December 2008.**

How to respond

- 1.11 Your response must be received by 24 December 2008 and may be sent by e-mail or post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

e-mail: conductcode@communities.gsi.gov.uk

If you are replying by e-mail please title your response 'Response to Model Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will form the revised members' code, the general principles order and the new employees' code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see **Annex C** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.
- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in

relation to the application of the conduct regime to the conduct of members in their non- official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

Code of conduct for local government employees

- 1.24 In August 2004, the then Office of the Deputy Prime Minister issued the consultation paper, *A Model Code of Conduct for Local Government Employees*. The paper consulted on a draft code defining the minimum standards of conduct that employees of relevant authorities would be expected to observe on carrying out their duties. The 2004 consultation was followed by further inquiries and consultations on matters relating to the conduct regime for local government.
- 1.25 The Department restated its commitment to introduce a model employees' code, under Section 82 of the Local Government Act 2000, in the local government White Paper 2006. However, in light of the above inquiries and consultations, and the introduction of the 2007 members' code, it was decided that the implementation of an employees' code should be delayed until the Department had an opportunity to consider the employees' code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new members' code.
- 1.26 With the implementation of the new devolved conduct regime and our proposals to amend the members' code, drawing on the experience of its first year of operation, we consider that the time is right to also consult on proposals to introduce a model employees' code.

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.
- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Consultation Question 1:

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

Definition of ‘criminal offence’ and ‘official capacity’

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members’ code, what constitutes a ‘criminal offence’. We propose for the purpose of the members’ code, that ‘criminal offence’ be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members’ code. However, serious criminal offences which we consider should come under the remit of the members’ code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

Consultation Question 2:

Do you agree with this definition of ‘criminal offence’ for the purpose of the members’ code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

- 2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members’ code, what constitutes ‘official capacity’.
- 2.14 We propose that for the purposes of the members’ code, ‘official capacity’ 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.

Consultation Question 3:

Do you agree with this definition of ‘official capacity’ for the purpose of the members’ code? If not, what other definition would you support? Please give details.

Offending abroad

- 2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

Consultation 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?

What does this mean?

- 2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.
- 2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

- 2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

The conduct regime

- 2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.
- 2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the

Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

- 2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

Consultation Question 5:

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

Proposed revisions to the members' code

- 2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.
- 2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at www.standardsboard.gov.uk

Parish councils

- 2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

Membership of other bodies

- 2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

Personal interests

2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

Prejudicial interests

2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.

2.28 It has been suggested that the meaning of 'determining' in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.

2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

Registration of members' interests

2.30 We propose that any new members' code would take into account any existing registration of members' interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members' code is introduced.

Consultation 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?

Consultation Question 7:

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

Consultation Question 8:

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

Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

Consultation Question 9:

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

Proposed amendments to the General Principles

What are the General Principles?

- 2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.
- 2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

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 a 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.

Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in a non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.

Consultation Question 10:

Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

Consultation Question 11:

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

2.40 We propose that for the purposes of the revised General Principles Order, 'official capacity' 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".

Consultation Question 12:

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

Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in an non-official capacity.

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

- 3.1 A code of conduct for local government employees ("employees' code") should provide the staff of an authority with an effective ethical framework within which to work and it should give that authority's citizens confidence that an authority's staff are working on their behalf in an appropriate manner.

Consultation Question 13:

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority's scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything

from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority's discipline procedures.

- 3.5 It is not intended that the employees' code be a burden on authorities or employees. The code should not constrain an authority's ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees' code in order to provide their staff with an effective ethical framework within which to work.

Application of the employees' code

- 3.6 We propose that the employees' code would apply to all relevant authorities and police authorities in Wales, as defined in Section 49 of the Local Government Act 2000. We are proposing that a model employees' code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees' terms and conditions of employment.
- 3.7 However, we do not propose to apply the employees' code where it is not needed, for instance to employees in professions that are covered by their own code of conduct; firefighters, teachers, community support officers, solicitors etc.

Consultation Question 14:

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Consultation Question 15:

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

- 3.8 We propose a two-tier model. The first tier, drawing on the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, will apply equally to all authority employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier, drawing on the members' code, will apply to 'qualifying employees', that is; either senior officials or those officials carrying out delegated functions.
- 3.9 With the members' code in place, and members having to abide by that code, there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to

do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

Consultation Question 16:

Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

Beyond the core values

Who are the 'qualifying employees'?

- 3.10 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the restrictions and expectations of the members' code should apply.
- 3.11 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders. Certain posts would be designated as qualifying employees.
- 3.12 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected members under section 101 of the Local Government Act 1972.

Consultation Question 17:

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

Using your position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.

Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees' code applies, the qualifying employee must have regard to this advice.

Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the authority's monitoring officer or, in the case of a parish council, through the parish clerk.

The registration of interests protects the qualifying employee by giving early warning of any possible areas of conflict of interest and provides assurance to the public that the qualifying employee is acting transparently. Only registration of personal interests in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the authority are required.

These are:

- Your membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
- Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
- Any contracts between the authority and any company you have an interest in, as above.
- Any land or property in the authority's area in which you have a beneficial interest.

A qualifying employee may seek to exempt their personal interests from the register of interests if they consider, for instance that having this information on record might put themselves or others at risk. In such cases, the qualifying employee should discuss the matter with their monitoring officer.

Consultation Question 18:

Should the code contain a requirement for qualifying employees to publicly register any interests?

Consultation Question 19:

Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.

Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear.

Consultation Question 20:

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

Consultation Question 21:

Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Contractors, partners and part time staff

3.13 Local authorities have an increasingly complex relationship with the private sector in its work with contractors, partners and part time staff. We consider that rather than attempt to determine centrally when and when not to apply the employees' code not just to local government employees, but those working on behalf of local government, it will be for local authorities themselves to decide, in agreeing contracts, partnership agreements or terms and conditions of employment, if and how the employees' code, in whole or in part, should apply.

Parish councils

3.14 The members' code applies to parish councillors as well as members of larger authorities, and it seems reasonable therefore for the ethical framework of the employees' code to apply to parish council employees. We recognise that the environment that parish councillors operate within is different to that of larger authorities and are conscious that what is consider to be a reasonable expectation in the employees' code for larger councils, may prove to be difficult for parish councils.

3.15 That being the case, we would welcome responses from parish councils on any particular aspect of the employees' code that might present difficulties and how those difficulties could be overcome.

Consultation Question 22:

Should the employees' code extend to employees of parish councils?

Legislative context

3.16 Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be deemed to be incorporated in employees' terms and conditions of employment.

Annex A: List of consultation questions

Chapter 2: 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?
- Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.
- Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.
- 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?
- Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- 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?
- Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?
- Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.
- Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?
- Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Chapter 3 Model Code of Conduct for local authority employees

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?
- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?
- Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?
- Question 22 Should the employees' code extend to employees of parish councils?

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

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

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

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

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, 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;

(vi) 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 a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a

firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body 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 person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you 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) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests,

you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority’s standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members’ Interests

Registration of members’ interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority’s register of members’ interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority’s monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority’s monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority’s monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annex C: Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
 - 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at: www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk



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Guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee under Regulation 17 of the Standards Committee (England) Regulations 2008.

1. The Standards Committee (England) Regulations 2008 include provision (Regulation 17 (1) (c)) for a Standards Committee to make a finding that a matter should be referred for determination by the Adjudication Panel. Before such a referral can be made the Standards Committee need themselves to have determined that the action which the Standards Committee could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient. The reference itself can be made only if the President or Deputy President has agreed to accept it.
2. The possibility of such a reference arises only after a monitoring officer has produced a report for the Standards Committee. The President of the Adjudication Panel is willing to indicate, prior to the consideration of that report by the Standards Committee, whether he would agree to accept such a referral. Such agreement would not commit the Standards Committee to making such a referral but would avoid the Standards Committee seeking to refer matters which were not suitable.
3. The maximum sanction which a Standards Committee can impose is a suspension for a period of six months. Thus the primary question to determine as to whether a reference can be accepted is whether, if a breach of the Code had occurred, a more severe sanction than six months suspension would be appropriate.
4. It would be rare for the Adjudication Panel's Case Tribunals to impose a suspension for longer than six months, not least because the effect of such a lengthy suspension might be seen as leading to constituents being left without effective representation at a time when the suspended elected member is not able to fulfil his responsibilities.
5. Less rarely, however, a Case Tribunal will **disqualify** an elected member. Whereas a suspension will apply only to the particular council whose Code of Conduct has not been followed, a disqualification will preclude the member concerned from being appointed to **any** relevant authority. Thus it would be an appropriate sanction for a member whose conduct leads to the view that the member concerned is unfit to hold such public office.
6. The Adjudication Panel has already published guidance ([Guidance on decisions available to a Case Tribunal](#)) as to when disqualification is likely to be an appropriate sanction. The following is an extract from that guidance:
 - 14.1 *The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.*
 - 14.2 *The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.*

- 14.3 *The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.*
- 14.4 *There have been repeated breaches of the Code of Conduct by the Respondent.*
- 14.5 *The Respondent has misused power or public assets for political gain.*
- 14.6 *The Respondent has misused council property.*
- 14.7 *The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.*
15. *There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.*
17. *Disqualification may be imposed as an alternative to suspension in order to avoid an authority being inquorate or the electorate left without adequate representation. Disqualification would allow by-elections to take place whereas this would not be possible if the member concerned were suspended.*
7. The President or Deputy President is likely to agree to accept references for matters which are of a kind which would merit disqualification.
8. It is important to bear in mind that the decisions on whether to refer, and whether to accept such a referral, are being made on the hypothetical basis of a finding that there has been a breach of the Code of Conduct. In taking a decision as to whether to accept a proposed reference, the President or Deputy President would not usually seek to form a view as to how likely it is that such a finding would be made. Nor would they usually seek to form a view on whether there are particular mitigating circumstances which would cause a Case Tribunal not to disqualify a member even though such disqualification might usually be seen as appropriate for a breach of the kind concerned. Those are decisions which should properly be left to the Case Tribunal hearing the case.
9. A reference to the Adjudication Panel should include:
- a brief description of the conduct which has given rise to the complaint
 - details of:
 - when the member was elected.
 - when the member made a declaration to abide by the Code.
 - relevant training the member has received.
 - the member's committee membership or Executive responsibilities; and
 - a note of any appointments to other bodies on behalf of the council and of any membership of other relevant authorities.
 - a copy of the relevant Code of Conduct should be appended.
 - the reference should indicate what paragraphs of the Code have been under consideration.
 - the investigating officer's report to the Standards Committee should be appended. The Standards Board for England has provided a template for such a report in its publication '[Local Standards Framework - Guide for Authorities.](#)'
 - A list giving the names, addresses and contact details of:
 - the respondent.
 - complainant.
 - monitoring officer.
 - investigating officer.
 - Standards Committee correspondent.
 - any legal representatives.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Dispensations Sub-Committee **Date:** Wednesday, 2 July 2008

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 5.00 - 6.00 pm

Members Present: Ms M Marshall, G Weltch and Mrs D Borton

Other Councillors:

Apologies:

Officers Present: C O'Boyle (Monitoring Officer), I Willett (Deputy Monitoring Officer) and G Lunnun (Allegations Determination Manager)

1. CHAIRMAN OF THE MEETING

The nomination of Ms M Marshall as Chairman of the meeting having been formally moved and seconded, it was:

RESOLVED:

That Ms M Marshall be elected Chairman of the meeting.

2. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

3. CODE OF CONDUCT - APPLICATIONS FOR DISPENSATION - WALTHAM ABBEY TOWN COUNCIL

The Deputy Monitoring Officer reported that the Waltham Abbey Town Council comprised 11 members. There were currently 10 serving members and there was 1 vacancy. In accordance with electoral law, when a casual vacancy occurred on a local council, the procedure required that a notice be posted indicating that the vacancy had occurred. In response to that notice, 10 local authority electors for the area could request an election be held. Once an election had been requested, the timetable then required that a bye-election be held within the statutory period. The Sub-Committee noted that an initial notice had been posted in Waltham Abbey on 3 January 2008 but no request for an election had been received.

The Deputy Monitoring Officer reported that after the period for requesting a bye-election had passed, the only option available to the Town Council had been to co-opt a person to fulfil the role of councillor. The co-option applied for the balance of the term of office concerned which in this case was May 2011.

The Sub-Committee noted that the Town Council had invited residents to apply for co-option to fill the vacancy and this had resulted in the receipt of five applications. As a result it would be necessary to make a selection at a special meeting of the

Town Council. Letters have been received from all 10 serving members of the Town Council seeking dispensations in respect of a commonly-held prejudicial interest. The prejudicial interest arose because one of the applicants for co-option had disclosed a political affiliation to a national political party and as a result all members of the Town Council felt that they had a prejudicial interest either as a result of being members of another political party or in the same political party as that of the applicant. In normal circumstances the declaration of a prejudicial interest would require those members to leave the Council Chamber and not participate in the meeting until the matter had been resolved. However, the quorum for Town Council meetings was two-thirds, namely 7 Councillors and this could not be achieved. Hence the applications for dispensation.

The Deputy Monitoring Officer advised that a dispensation could be granted 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 of the Code of Conduct because -

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

(ii) the authority was not able to comply with any duty which applied to it under Section 15(4) of the Local Government and Housing Act 1989 (Political Balance in Committee Memberships).

The Deputy Monitoring Officer also reported that only the Dispensations Sub-Committee following authorisation from the Standards Committee could grant dispensations and that it did so at its discretion. In considering applications for dispensation it needed to balance the public interest in preventing members with a prejudicial interest from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority.

The Committee considered the applications for dispensation and additional information supplied by 5 members of the Town Council. The Sub-Committee noted that some of the additional information provided revealed that some of the other applicants were affiliated to a political party.

The Sub-Committee took account of the fact that co-option to a Parish or Town Council was a regular occurrence in order to fill a casual vacancy but did not normally attract so many applicants. The Sub-Committee expressed surprise that a bye-election had not been requested in view of the response to the request for applicants for co-option. In coming to their decision the Sub-Committee took account of the fact that many decisions were taken by local authorities about people known to be affiliated to a particular political party. Whilst considering each application individually on the information provided, the Sub-Committee determined that the decision of the Town Council should be taken by a reasonably representative group of members of the authority.

RESOLVED:

(1) That the applications submitted by Town Councillors Mrs P Brooks, A Clark, J Collier, Mrs R Gadsby, A James, S Pryde, W Pryor, Mrs S Stavrou, A Watts and Mrs E Webster be agreed;

- (2) That the duration of the dispensations be for a period expiring 31 August 2008;
- (3) That the decisions on these applications do not set a precedent for any future similar applications;
- (4) That the Town Council be advised that in the event of any future casual vacancy on the Town Council, the election of a member following a bye-election is considered to a better and more transparent way of filling the vacancy; and
- (5) That the Town Council be requested to report back on how they proceeded following notification of the granting of the dispensations, when they held their meeting to co-opt a member and details of the outcome of that meeting.

CHAIRMAN

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EPPING FOREST DISTRICT STANDARDS COMMITTEE

APPLICATION FOR DISPENSATION

UNDER THE LOCAL AUTHORITIES (MODEL CODE OF CONDUCT) ORDER 2007

Name of applicant

Home address

Name of Council for which dispensation sought:

Epping Forest District Council or

..... Parish Council (delete as appropriate)

Matter to be considered.....

.....

Nature of Member's Interest.....

.....

Date(s) and Meeting at which consideration will take place (if known)

.....

Quorum for Meeting:.....

NOTES

Regulation 3 of the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 provides:

"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, (as amended) by the Local Government (Committees and Political Groups) Regulation 1998
- (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 (a) is prohibited from exercising functions which are the responsibility of the executive of the authority and which would otherwise be discharged by him solely."

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Agenda Item 8

Allegations made against District and Parish/Town Councillors

(Monitoring Officer)

(a) To note the current position on allegations made against District Councillors:

Reference	Current Position
EFDC 1/2008	Assessments Sub-Committee on 15 July 2008 referred the allegation to the Monitoring Officer for investigation. Sub-Committee also directed that the Monitoring Officer should combine this investigation with a linked complaint (EFDC 3/2008). Deputy Monitoring Officer is undertaking investigations.
EFDC 2/2008	Assessments Sub-Committee on 15 July 2008 decided that no action should be taken on the allegation. Complainant requested a review which was considered by the Reviews Sub-Committee on 2 October 2008. The Reviews Sub-Committee agreed that no action should be taken on the allegation.
EFDC 3/2008	Assessments Sub-Committee on 15 July 2008 referred the allegation to the Monitoring Officer for investigation. Sub-Committee also directed that the Monitoring Officer should combine this investigation with a linked complaint (EFDC 1/2008). Deputy Monitoring Officer is undertaking investigations.

(b) To note the current position on allegations made against Parish/Town Councillors:

Reference	Current Position
EFDC 4/2008	To be considered by the Assessments Sub-Committee on 9 December 2008.
EFDC 5/2008	Clarification being sought from the complainant.

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