THE CASE REVIEW 2007

The Code of Conduct: Questions and answers

Confidence in local democracy

the Standards Board for England

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introduction

This is the second paragraph-by-paragraph analysis of the Code of Conduct issued by the Standards Board for England. Each paragraph of the revised Code (2007) is explored through a series of questions and answers, followed by case examples wherever possible.

The original Model Code of Conduct was published by Parliament in November 2001. Since then the Standards Board has received around 20,000 complaints. In its very early days, the majority of complaints were investigated. Now, less than a quarter receive further attention. Among those which are swiftly rejected – a stage which only takes around ten working days – are the trivial, politically motivated and vexatious.

Over the years, the number of cases which have resulted in sanctions being handed down has also reduced, as shown by the downward trend of cases considered and sanctions applied by the Adjudication Panel for England. Research carried out for the Standards Board by Bostock Marketing Group (BMG) suggests that members have developed a greater awareness of what is, and is not, acceptable. BMG research with Standards Board stakeholders (2006) noted that a greater awareness of the Code of Conduct explains, in part, reasons for improved ethical standards. BMG research into the role of standards committees (2006) showed benefits of local hearings and investigations to be a raised awareness of the Code, a reinforcement of its importance, and a raised awareness of standards committees and monitoring officers. Once the boundaries are known and accepted, they are crossed less often.

Another change, introduced in 2003, has been the shift to local investigations and hearings. As a step towards building the local ownership of the system identified by the Committee on Standards in Public Life and others as being essential to success, this has developed so that currently the majority of cases are dealt with by local authorities themselves.

This was followed by the introduction of a revised Code of Conduct in May this year. An extensive consultation exercise was initially undertaken with local government, which included members of the Standards Board touring the country. Following this, the government produced a revised Code. Among the changes were a relaxation of the rules to allow councillors better to fulfil their community advocacy role, clarification of the

occasions on which releasing confidential information could be justified as being in the public interest, and a clear message that bullying was not to be tolerated.

There were other changes. During consultation it became clear that the requirement to report fellow members believed to have broken the Code was unpopular in some quarters. This requirement has been removed and replaced by rules prohibiting the intimidation of those involved in an investigation. And good progress has been made towards the frequently expressed desire for a Code which is clearer. Both clarification and guidance on interpretation continues to be an important responsibility of the Standards Board.

There are more changes to come. At the time of writing, the Local Government and Public Involvement in Health Bill is due to complete the final stages of its parliamentary journey. It will require local authorities to receive complaints themselves, to decide which need further action, and to pass only those relatively few which are inappropriate to be dealt with locally back to the Standards Board.

The Standards Board has shifted its own focus too. We will support and encourage an exchange of knowledge and experience. We will also seek to provide a national oversight of a locally owned system which will be essential for public confidence.

And, of course, the law is far from static. Alongside the major shifts resulting from revision of the Code and changes in legislation are the changes which result from case law, in particular the judgments of higher courts. One such change resulted from the ruling by Mr Justice Collins overturning the decision and sanction handed down by the independent Adjudication Panel for England in the case concerning the Mayor of London in 2006. This has prompted Parliament to reconsider the way in which the Code does, and does not, impact on someone when they are not acting in their capacity as a member.

It is a consequence of the constantly developing understanding and the evolving interpretation of the Code of Conduct that publications such as this will become outdated. It is our intention to reissue the *Case Review*, complete with its paragraph-by-paragraph analysis, on an annual basis to reflect that developing

understanding. We will also continue to issue bulletins to those who request them via our website and to find ways to enable authorities to share their understanding and experience.

We believe in the importance of public confidence in local democracy. The Code of Conduct is an important tool to enable local authorities to ensure that the minority who damage that precious confidence, and the reputation of their colleagues, can be called to account. This *Case Review* is intended to aid those charged with making the Code work, at a local level. I commend it to you.

Sir Anthony Holland
Chair
The Standards Board for England

DISCLAIMER

The views expressed in this publication are those of the Standards Board for England and should not be treated as formal legal advice. Further guidance on the interpretation of the Code of Conduct will be obtained from the decisions of the Adjudication Panel for England and the courts.

THE CODE OF CONDUCT

Paragraph 1

Introduction to, and interpretation of, the Code of Conduct

Paragraph 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.

Q&A

Paragraph 1

Q1: What is the Code of Conduct?

The Code of Conduct is the Model Code of Conduct that appears in the schedule of the statutory instrument known as The Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159), ("the Order").
It replaces the Model Code of Conduct in The Local Authorities (Model Code of Conduct) (England) Order 2001 (SI 2001/3575).

The Code of Conduct consolidates previous codes for the different types of authority in local government into one document governing the conduct of their members. Unless stated otherwise, references to "members" throughout this publication should always be taken to include co-opted and appointed members as well.

Q2: Which authorities does the Code of Conduct apply to?

All authorities listed in paragraph 1(2) of the Order described above. The authorities consist of all English and Welsh police authorities and the following English authorities:

- county councils
- district councils
- London borough councils
- parish councils
- the Greater London Authority
- the Metropolitan Police Authority
- the London Fire and Emergency Planning Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly
- fire and rescue authorities
- joint authorities
- the Broads Authority
- national park authorities

Members should also note that not every part of the Code applies to every listed authority. It is recommended that members check with their monitoring officers and legal advisers to see if there are any exceptions that apply.

In particular please note the exceptions in the following paragraphs:

- Paragraph 6(c) of the Code (discussed on page 61) is not compulsory for police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, fire rescue authorities and joint authorities. This refers to the Local Authority Code of Publicity which does not apply to these types of authorities unless they choose to adopt it.

- Paragraph 7 of the Code, which refers to taking account of advice from statutory officers (discussed on page 71) does not apply to parish councils.

Q&A

Paragraph 1

- Paragraph 12, which refers to prejudicial interests, (discussed on page 115) does not apply to parish councils unless they choose to adopt it.

Also, some paragraphs of the Code only apply to those authorities operating executive arrangements.

Q3: From what date does the Code of Conduct apply?

Authorities were required to adopt the Code, with or without modifications, by 1 October 2007. If an authority has not adopted the Code by this date they must do so as soon as practicable. In any event, after 1 October 2007 members will automatically be bound by the compulsory provisions of the Code which apply to the type of authority they belong to.

Q4: Does the term "meeting" apply to informal meetings?

No. This term only applies to formal meetings of the authority, its executive or its committees or sub-committees. Informal meetings between members and officers, and political group meetings, are not covered by the requirement to declare interests.

However, paragraph 5(a) of the Code, which prevents members from using their position improperly, applies at all times. A member who uses pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest will probably fail to comply with paragraph 12(1)(c) of the Code. This is because they will have been improperly seeking to influence a decision.

Q5: What is the definition of a "co-opted member"?

A co-opted member is defined by Section 49(7) of the *Local Government Act 2000* as: any person who is not a member of an authority, but who is a voting member of a committee or sub-committee of that authority. This includes independent members of standards committees (see question 6).

Not every member of a committee or sub-committee is entitled to vote. Section 13 of the *Local Government and Housing Act 1989* establishes the general principle that members of committees appointed under section 102 of the *Local Government Act 1972*, who are not members of the local authority, do not generally have any voting rights.

However, a number of exceptions are specified under this rule:

- Church and parent governor members of education overview and scrutiny committees have voting rights, as do all members of advisory committees

Q&A

Paragraph 1

appointed under Section 102(4) of the *Local Government Act 1972*. They therefore fall within the definition of a co-opted member.

- Independent remuneration panels established under Part 4 of the Local Authorities (Members' Allowances) (England) Regulations 2003 (SI 2003/1021) are not considered to be committees or sub-committees of the authority that establishes them. Accordingly, members of an independent remuneration panel fall outside the definition of a co-opted member.

Q6: Are independent members of standards committees co-opted?

Yes. The term 'independent member' of a standards committee is used as shorthand for those members who are appointed under Section 53(4)(b) of the *Local Government Act 2000*. All standards committees must include at least one member who is not a member or officer of any relevant authority. Also, where the total number of committee members exceeds three, at least 25% of the committee should be independent members.

The Standards Board for England recommends that standards committees should appoint more than one independent member and that an independent member should chair the committee. There are proposals to make this a legal requirement in 2008. Additional restrictions are imposed by Regulation 4 of the Relevant Authorities (Standards Committee) Regulations 2001 (SI 2001/2812).

However, the term 'independent member' has another meaning and is used to refer to politically independent elected members. Therefore there is the potential for the two meanings to become confused.

Some relevant authorities include appointed as well as elected members of local authorities. For example, police authorities have independent members who are not elected but appointed through a local selection process.

'Lay member' of a standards committee is an alternative description for those members appointed under Section 53(4)(b) of the *Local Government Act 2000*. This description distinguishes clearly between these lay members and members who are independent in other ways.

Standards committee lay members can be independent members of more than one authority's standards committee. This is because the restriction that an independent member must not be a member of any other relevant authority in Section 53(4)(b) of the *Local Government Act 2000* only applies to elected members and appointed members.

Q&A

Paragraph 1

Q7: What is the definition of an "appointed member"?

An appointed member is generally anyone who is not subject to the requirements of Section 83 of the *Local Government Act 1972*. This section states that people who have been elected must make a declaration accepting the office to which they have been elected, in addition to giving a written undertaking to observe the Code.

Appointed members fall within Section 52(3) of the *Local Government Act 2000*, an example being a member who is appointed to a police authority. Appointed members may also fall within the definition of a co-opted member.

The terms 'appointment' and 'co-option' should be used carefully when referring to parish councils, as they may carry different meanings under the *Local Government Act 2000* and election legislation (see Q8 on page 15). While some appointments to parish councils may be covered by Section 83 of the *Local Government Act 1972*, some may not.

Under the Local Government and Public Involvement in Health Bill, a new power is proposed for parish councils to "appoint persons to be councillors of the council".

notes

Paragraph 1

notes

Paragraph 1

THE CODE OF CONDUCT

Paragraph 2

Scope

Paragraph 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.

Q&A

Paragraph 2

Q8: Who does the Code of Conduct apply to?

The Code applies to all members including co-opted members and appointed members of relevant authorities if either one of the following applies:

- They are elected members and so have signed their declaration of office, which incorporates a written undertaking to observe the Code.
- They are not elected but are co-opted members or appointed members who have given a written undertaking to observe the Code and who are allowed to vote on issues.

This is due to the combined effect of Section 52 of the *Local Government Act 2000* and Section 83 of the *Local Government Act 1972*, and any orders made under those acts. Failure to follow the requirements of this legislation creates either a vacancy in office for elected members or an inability to act in office for other members.

Q9: When does the Code of Conduct apply?

Most of the Code's provisions only apply to activities performed whenever members act in an official capacity. This means whenever members conduct the business of their authority, or act, claim to act or give the impression they are acting in their official capacity or are representing their authority.

However, three paragraphs also apply at any time where their behaviour has led to a criminal conviction:

- Paragraph 3(2)(c) (intimidation of certain persons in relation to an allegation under the Code).
- Paragraph 5 (disrepute).
- Paragraph 6(a) (improperly confer or secure an advantage or disadvantage).

Note: until such time as there is Parliamentary approval for amendments to Section 52 of the *Local Government Act 2000*, the Code does not apply to conduct outside of the functions performed as a member. Only activities linked to the functions of a member's office will be covered by the Code. If the legislative amendments are passed, the Code will also apply to criminal activity which has led to a conviction, whether or not it is linked to a member's office.

Otherwise the Code does not affect a member's private life.

The Code itself does not provide any further guidance on official capacity. However, there are circumstances when it is clear that the Code operates. These include any meetings of the authority, its executive or any of its committees or sub-committees. Participating in such meetings plainly involves carrying out the business of the authority. When an elected member exercises powers delegated to them as a

Q&A

Paragraph 2

member of the authority's executive, or holds a surgery for residents of their ward, the member is clearly performing the business of the office to which they have been elected. Members' face-to-face dealings with officers about the business of the authority will almost always mean they are conducting the business of their office under paragraph 2(1)(a) of the Code.

Similarly, members of police or fire authorities will be conducting the business of their office when they attend formal meetings with police or fire officers, or make formal visits to police or fire stations.

The scope of representing an authority is potentially very wide. The Standards Board for England believes that this will cover situations where a member is appointed or nominated by their authority to another body, such as a board of directors or trustees.

Members will need to distinguish between occasions where they are invited to a meeting or function as an individual, and those where they are invited because of their position as a member of the authority.

In the latter situation, they will be acting as a representative of the authority. Borderline situations may arise in relation to political events, where it might not be clear whether a member's presence relates to their position within a political party or to their membership of the authority.

Any investigation will need to establish who invited a member to be there, in what capacity that invitation was extended and for what purpose. The view of the person sending the invitation will be of primary importance but the member's view will also be relevant. It is possible to invite a member to attend an event but that does not necessarily mean that they are being asked to attend as a councillor.

For example, Lord Snowdon attended every event he went to as a Lord. He was one so he had no choice. Probably, he was invited to them all as "Lord Snowdon". However, there were probably far fewer events where his status as a Lord was the reason for his invitation. With councillors the same situation can arise. The fact that an invitation is made to a person who is a councillor using that title does not necessarily mean that the invitation is extended to them in that capacity. Often it will. However, it will be important to understand the intentions of the person extending the invitation.

Q10: Are criminal offences committed before becoming a member covered by the Code of Conduct?

Behaviour classed as a criminal offence will only be covered by the Code if a member is convicted after they have taken office.

Q&A

Paragraph 2

Q11: Do private discussions about authority business come under "official capacity"?

The Standards Board for England is likely to view any private discussion of authority business, either with members or with the authority's officers, as carrying out the business of the member's office.

Only where there is very clear evidence that the conversation was not concerned with performing authority business will it fall outside paragraph 2(1) of the Code of Conduct.

Q12: Could the Code of Conduct apply when the member is abroad?

Yes. It is quite possible that the member could be acting as a representative of the authority on an official visit abroad.

Q13: When does the Code of Conduct cease to apply?

The Code no longer applies when members leave office, either by resignation, disqualification or the expiry of their term of office.

A member suspended from holding office in their authority by a case tribunal under Section 79(4)(a) of the *Local Government Act 2000*, or by a standards committee in accordance with regulations issued under Section 66 of the *Local Government Act 2000*, will be unable to take part in the formal business of the authority during the period of suspension.

However, the Standards Board for England's view is that a suspended member can continue with ward business, such as receiving representations from ward residents. Therefore, a suspended member can still act, in these limited circumstances, in an "official capacity".

The landmark ruling in the case of Ken Livingstone v the Adjudication Panel for England [2006] EWHC 2533 (Admin) gave clearer guidance about where activities could be regarded as being carried out in an "official capacity", and so subject to the Code. The implications of the Livingstone decision are discussed in the Q&A section for paragraph 5 on page 53.

Q14: Could a conflict ever arise for members between their duty to comply with the Code and their lawful obligations to a body on which they serve as representatives of the authority?

In the view of the Standards Board for England this rarely occurs.

Members who represent their authority on other bodies – except for relevant authorities – are expected to comply with the general obligations contained in Part 1 of the Code.

Q&A

Paragraph 2

However, the detailed provisions about the disclosure of interests at authority meetings in Part 2 of the Code (paragraphs 9(1) and 12(1)(a) of the Code) do not apply when members attend meetings of the bodies on which they serve. These bodies are likely to have their own rules about such matters.

Similarly, members are not required to fill out a separate register of interests form for bodies to which they have been appointed. This is unless the body is a "relevant authority" as defined in Section 49(6) of the *Local Government Act 2000* or unless that body has its own registration requirements. However, a member who has a prejudicial interest about a matter being considered by another body is still bound by the obligation under paragraph 12(1)(c) of the Code not to "seek improperly to influence a decision about that matter" (see page 115 for further information about paragraph 12).

Paragraph 2(5)(b) is relevant where the Code's provisions conflict with the legal obligations of company directors or the trustees of charitable trusts. It provides that the legal obligations override the Code. For further information about the meaning of 'representative', please see Q9 on page 15.

notes

Paragraph 2

notes

Paragraph 2

THE CODE OF CONDUCT

Paragraph 3

Respect, equality, bullying and intimidation

Paragraph 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.

Please note: each point in paragraph 3 is dealt with separately in this section.

Q&A

Paragraph 3

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

> **Note:** paragraph 3(1) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through members' arguments and public debate are an essential part of the cut and thrust of political life.

Q15: What kinds of conduct are not covered?

A very clear line has to be drawn between the Code of Conduct's requirement of respect for others, including members of the authority with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.

A rule of thumb is expressed in this comparison:

- "You're talking drivel" is likely to be an acceptable expression of disagreement.
- Calling someone a "useless, fat, dim-witted, ugly four-eyed git", on the other hand, is more likely to be a failure to comply with paragraph 3(1).

We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics.

Members should note that an Adjudication Panel for England hearing has decided that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code.

However, the conduct could be directed against a general class or type of person, none of whom are present to witness it. The same Adjudication Panel hearing decided that in this case, conduct would not be a potential breach of this paragraph of the Code. However, depending on the circumstances, another paragraph of the Code might be engaged.

Q16: Does this mean members cannot challenge the views or performance of officers?

No. See Q22 on page 30.

case examples

Paragraph 3

Paragraph 3(1)

Example 1

A member interrupted an interview between a reporter and another member during a break in a council meeting. He steered the reporter out of the room and threatened the member using extremely abusive language. This was seen by others including members of the public. The member immediately apologised for his behaviour. He was censured.

Example 2

A member sent an aggressive and threatening letter about another councillor to members of a rival political group. He did this after a meeting and via the council's email system. He abused and threatened the councillor over the phone two days later, and then assaulted him. He also sent an email in which he referred to councillors as "idiots".

The case tribunal decided that the letter and the email were rude and intemperate and failed to treat others with respect. Also the tribunal decided that the conduct towards the other member was extremely rude and that the threats and violence amounted to failing to treat him with respect. This conduct also brought the member's authority into disrepute.

The case tribunal noted that the member had apologised to the other member and said he had learned from the experience. The tribunal also took into account the fact that the member was a long-serving and committed councillor. He was suspended for a year.

Example 3

A member persistently refused to obey the chair's rulings at meetings, refused to be quiet when asked, and at two meetings of the council had to be asked to leave by the police. The events took place over a three-month period. He was disqualified for a year.

Q&A

Paragraph 3

Paragraph 3(2)(a)

(a) You must not do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006).

Q17: What are the "equality enactments"?

The equality enactments outlaw discrimination on the grounds of sex, race, disability, religion or belief, sexual orientation and age.

Generally, these statutes impose positive duties to eliminate unlawful discrimination and harassment, and promote equality. They also impose specific positive duties on certain authorities and cover a variety of situations. Members should seek advice if they are unsure about the particular nature of the duties of their authority.

Examples include:

The equal pay legislation. This prohibits unjustifiable differences in pay between men and women, and covers most matters normally included in contracts of employment.

The sex discrimination legislation. This relates to discrimination on the grounds of sex or marriage in non-contractual matters such as:

- arrangements concerning recruitment
- offers of employment
- trade union membership
- training transfer
- promotion
- dismissals
- redundancies
- any other treatment not covered by a contract of employment

The racial discrimination legislation. This means that local authorities must have due regard to eliminating unlawful discrimination, and to promoting equality of opportunity and good relations between different racial groups. It also creates specific duties associated with carrying out functions and the provision of goods and services.

The *Equality Act 1996*. This creates similar offences to the racial discrimination legislation for discriminatory acts done by reason of a person's religion or belief, or lack of religion or belief.

The disability discrimination legislation. This prohibits disability-related discrimination and makes failure to make reasonable adjustments a form of discrimination. Exceptionally it does not prohibit or restrict 'positive' discrimination in favour of disabled people.

Q18: What would be a breach of the anti-discrimination laws?

Breaches of the various areas of anti-discrimination laws can occur in four main ways. These are:

Q&A

Paragraph 3

1) Direct discrimination
Direct discrimination occurs when someone is treated less favourably on the grounds of their sex, race, disability, religion or belief, sexual orientation or age.

For example, if a woman was not called for an interview for a chief executive post, despite the fact that she fulfilled the person specification better than any of the men short-listed, it is likely that direct discrimination occurred.

2) Indirect discrimination
Indirect discrimination may occur where a requirement or condition has a disadvantageous and disproportionate impact on members of particular groups that are defined by sex, race, disability, religion or belief, sexual orientation or age.

Consider a situation where members decide that all applicants for council employment must be six-foot tall. This requirement would have a disproportionate impact on women and members of many racial groups. It would also be unjustified.

3) Victimisation
Victimisation occurs if a person is treated less favourably because they have complained about unlawful discrimination or supported someone else who has.

An example would be where a member sought to undermine the employment prospects of an officer, when the officer has supported someone who made an allegation of discrimination against the member.

4) Harassment
Harassment occurs where unwanted conduct violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment on grounds of their sex, race, disability, religion or belief, sexual orientation or age.

An example would be if officers were subjected to unwanted banter or teasing about their sexual orientation or beliefs.

Q19: How can members cause their authority to be in breach of anti-discrimination laws?

The Code of Conduct is not intended to stifle democratic debate. Members should always remember that Article 10 of the *Human Rights Act 1998* gives a high level of protection to comments that are genuinely made in the course of political debate, even if most people would find them offensive.

A member must be careful not to conduct themselves in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders their authority's fulfilment of its positive duties under the equality enactments. Such conduct may cause their authority to breach an equality enactment and lead to a

Q&A

Paragraph 3

complaint that they have breached this paragraph of the Code.

Merely arguing, or even voting, against a proposal which is aimed at complying with a positive anti-discriminatory duty would not be enough by itself to risk breaking this part of the Code. Simply having a party political position on an issue is unlikely to amount to a breach of this provision because it does not, of itself, involve the council doing anything.

Under the equality enactments, an authority is made liable for any discriminatory acts which a member commits. This will apply where they say or do something in their official capacity in a discriminatory manner.

case examples

Paragraph 3

Paragraph 3(2)(a)

Example 1

This case example concerns a member's behaviour under the previous Code of Conduct and the general duty under Section 71 of the *Race Relations Act 1976*. The issues raised remain relevant under the revised Code.

In a case before the Adjudication Panel for England, the tribunal considered how the general duty imposed by Section 71 of the *Race Relations Act 1976* impacted on the behaviour of a councillor at a training session. He had attended a training seminar about the council's race equality scheme with other members and officers. His conduct was found to have been disrespectful to the trainer.

The tribunal viewed with concern the fact that, rather than acknowledging his initial inappropriate behaviour at the training session, the member chose to repeat it in interviews to the local newspaper and radio station and then to compound it by making a statement to a meeting of the council using offensive terms and language.

The tribunal held that the duty under Section 71 was an important one. It stated that this duty:

"…reflects what a multicultural society expects of a local authority, namely that in exercising its functions, it should have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.

"The tribunal considers that an objective observer would regard it as essential to the good reputation of a local authority that it is seen to be embracing the implications of that duty when acting corporately and also through the individual actions of members and officers.

"As the council's adopted [racial equality scheme] stresses, it provides the means of leading by example, by raising the awareness of the problems and discrimination that ethnic minorities may face; its success is recognised as being dependent on the commitment to making it work. The [racial equality scheme] was adopted shortly before the training session

case examples

Paragraph 3

and it was clearly important to the council that the commitment of members and officers was displayed at this early stage."

The member was disqualified from office for three years.

> **Note:** members should be aware that even if this paragraph is not engaged, issues of the reputation of the authority or office of councillor may well arise.

Example 2

Example 2 is a hypothetical case concerning a member's comments about people with disabilities.

A local authority considered a scheme whereby its leisure centre would provide weekly swimming sessions open only to disabled adults. A member interjected and shouted out, "I could not care less about disabled paralympians. We've only got one swimming pool in the entire area and we can't afford to have it shut for two hours each week to all the other swimmers in the area!"

If the member had said no more after his first sentence and voted against the plan, this would be a potential breach of the paragraph, as it might cause the council to be in breach of its general duty under the *Disability Discrimination Act 1995 (as amended)*.

However, if the reason for his first statement, intemperately stated though it might be, is then said to be a concern over resources (in other words, the pool being closed to other swimmers for two hours each week), that behaviour would probably not be sufficient for a breach of the Code.

Q&A

Paragraph 3

Paragraph 3(2)(b)
(b) You must not bully any person.

> **Note:** this is a new paragraph of the Code of Conduct which reflects the concerns of the Standards Board for England and of its ethical standards officers with the recurring problem of bullying of officers by some members. However, its scope is not just limited to the bullying of officers.

Q20: What is meant by 'bullying' in this section of the Code of Conduct?

The Standards Board defines bullying as offensive, intimidating, malicious, insulting or humiliating behaviour by an individual or group of individuals, based on abuse or misuse of power or authority, which attempts to undermine an individual or a group. It can have an impact on a council's effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave.

Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, or when the behaviour by both the complainant and member contributed equally to the breakdown in relations.

Q21: Who decides whether someone has been bullied?

Ultimately a standards committee, the Adjudication Panel for England or the courts will decide. They are likely to use an objective test. If an officer, member or member of the public thinks that a member has bullied them, the conduct will be looked at through the eyes of a notional reasonable member of the public who looks at the conduct objectively.

Equally, while members may not consider their conduct has constituted bullying, it is likely to be seen as such if a notional reasonable member of the public who looks at the conduct objectively would regard it as bullying.

Q22: Can members criticise officers?

Yes. In some cases, officers have been known to reject reasonable criticism appropriately made and describe it as bullying. The government did not intend the Code of Conduct to constrain members' involvement in local governance, including the role of members to challenge performance. Members are able to question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time.

Q&A

Paragraph 3

This paragraph does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in criticism of the way in which an officer or officers handled particular matters.

It is important that members raise issues about poor performance in the correct way and at the proper forum, such as in a private meeting with a senior manager, and not in a public meeting or through a published attack in the media.

If a member's criticism is a personal attack or is offensive in nature it is likely to be unacceptable. Councils should have clearly defined policies, procedures and occasions where those sorts of issues can properly be raised. It is only where members' conduct is unfair, unreasonable or demeaning that paragraph 3(2)(b) will be relevant.

Q23: How can bullying conduct be prevented from developing?

Ideally, a culture of honest and clear communication should be sought, with respect for the individual and for the confidentiality required when managing individual performance-related issues. The bullying of officers might be reduced by establishing a specific protocol, which addresses issues such as member-officer work relations and appropriate behaviour.

Factors that contribute to the breakdown in relations between members and officers at parish and town council level include the council not having a member-officer protocol, proper disciplinary and grievance procedures, or contracts of employment. In addition, members are often unskilled and inexperienced in approaching employment-related issues.

The protocol for parish and town councils can include such simple but important matters as acceptable times to contact the clerk by telephone at home or call at the clerk's home on council business.

Q24: What constitutes evidence of bullying?

Although many minor acts can cumulatively amount to bullying, the subjective general view of the victim or witness needs to be supported by objective evidence of action that can amount to bullying. Anyone alleging a pattern of bullying conduct should provide some examples of the words or actions used.

In contrast, general statements such as "the member has repeatedly intimidated and denigrated me" are not adequate. The victim or witness should describe the specific conduct they are concerned about, providing dates, times, locations, and descriptions of the demeanour of the person concerned.

Q&A

Paragraph 3

This is not intended as an exhaustive list but as an indication of the kind of evidence needed.

A number of cases considered by the Adjudication Panel for England have concerned the bullying of officers and members. This bullying conduct has included:

- Abusive or threatening verbal contact.
- Circulating inappropriate emails critical of officers and fellow members.
- Making allegations about officers in letters, emails or in person, both in the company of the officers' colleagues and in public.

case examples

Paragraph 3

Paragraph 3(2)(b)

Please note: these case examples happened under the old Code of Conduct which did not contain a specific provision about bullying.

Example 1

This example indicates what action amounts to bullying.

A member made unjustified complaints about officers, questioning their integrity and implying that they had acted unprofessionally. He had no evidence to substantiate his claims. He made disparaging remarks about their conduct when he did not agree with them. The case tribunal found a pattern to the member's behaviour, saying:

"What started off as a matter of legitimate concern became a personal battle, with the [councillor] unable to accept reasonable explanations.

"The [councillor] perceived anyone who did not accept his version of events as wrong and in some way underhand. Instead of remaining disinterested the [councillor] treat[ed] the matters as personal battles which were to be won by any means, including tarnishing the professional reputations of the officers involved without justification."

Examples 2 and 3 are examples of threatening behaviour towards officers.

Example 2

In his capacity as an executive member, a former council leader wrote to the council's head of human resources after she had attempted to investigate sickness absence taken by his ex-partner who was a council employee. He threatened to write to all members of staff instructing them not to co-operate with senior managers over sick leave.

Later, at a meeting, he became angry when the head of human resources suggested that he might need to declare an interest at an informal meeting. He ordered her out of the meeting and threatened to have her disciplined. He then wrote to the monitoring officer demanding that action be taken against her. In the letter he threatened to

case examples

Paragraph 3

write to the media and to all employees stating that they should have no faith in the head of human resources.

The executive member had already been found to have breached the Code by the standards committee over a previous incident involving the way in which he spoke to an officer.

The case tribunal found that the member's purported apologies about his current behaviour were less than wholehearted. Due to the seriousness of the breaches and his persistence in demanding that the head of human resources be disciplined, the member had ensured that a period of disqualification was appropriate.

Taking into account his difficult personal circumstances at the time of the breaches, he was disqualified from office for three months.

Example 3

A member threatened one of the council's solicitors during a discussion with him about arrears of rent which had arisen under a lease by a community centre. The solicitor had advised him that the community centre could be repossessed if the debts were not repaid.

The solicitor was allegedly told by the member that there was a new administration in power; that under no circumstances would repossession take place and if he ever tried to do this he would "have his guts for garters". For this and other breaches of the Code of Conduct the member was disqualified for 15 months.

Q&A

Paragraph 3

Paragraph 3(2)(c)

(c) You must not 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.

Q25: When does the duty not to intimidate start?

Once there is the possibility of a complaint that the Code of Conduct has been broken, members need to be alert to how their behaviour towards potential witnesses or officers involved in the administration of their case may be viewed. However innocently the contact is intended or may appear, great care should be taken when members deal with people involved with their case. Apart from interviews with an investigator, discussion of the case should normally be limited to administrative arrangements.

Q26: What can a member do to protect themselves from allegations of intimidation?

A member should not instigate communication about a complaint or its investigation with others involved in a case.

If the need arises and the member has no legal assistance, they should normally communicate with those involved in writing. This is for their own protection and is also in the interests of transparency. If that is not possible then members should, if appropriate, confirm their conversations in writing as soon as possible.

case examples

Paragraph 3

Paragraph 3(2)(c)

Please note: this case example happened under the old Code of Conduct which did not contain a specific provision about intimidation.

Example 1

A member held a meeting with an officer at which he attempted to coerce him into influencing one of his staff not to give evidence against the member at a hearing before a case tribunal for alleged breaches of the Code of Conduct. The member was already disqualified for three years. He was disqualified for a separate period of two years as a result of this behaviour which resulted in a longer period of disqualification overall.

Q&A

Paragraph 3

Paragraph 3(2)(d)

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

Q27: What activities would "compromise the impartiality of those who work for, or on behalf of, your authority"?

Paragraph 3(2)(d) is directed at any activity that seeks to put pressure on officers to carry out their duties in a way that is biased or partisan. This may include direct or indirect coercion to favour a particular person, group or organisation, whether commercial, political or voluntary. This is contrary to officers' obligations to act independently and in the public interest.

It is important to take a firm line against any conduct that undermines the principle of political neutrality, under which all officers operate. The only exceptions to this neutrality are political group assistants appointed under Section 9 of the *Local Government and Housing Act 1989*.

Paragraph 3(2)(d) may cover the whole range of activities carried out by the authority. Examples include:

- Preparing committee reports, particularly in a controversial area such as planning control or licensing.
- The allocation of council housing.
- The appointment of staff.

Local authority constitutions drawn up under Section 37 of the *Local Government Act 2000* must contain protocols for managing member-officer relations (in accordance with the requirements of the *Local Government Act 2000 (Constitutions) (England) Direction 2000)*. Members who fail to comply with such protocols may be found to have compromised the impartiality of officers.

The fact that the conduct under consideration did not actually compromise the impartiality of officers, or was not intended to do so, will not necessarily excuse a member's conduct. Paragraph 3(2)(d) covers any conduct that was intended, or was likely, to compromise the impartiality of officers.

Q28: Who is covered by the phrase "work […] on behalf of […] your authority"?

Clearly this term covers those who work for the authority, such as council officers. The inclusion of the phrase "or on behalf of" indicates that members must be just as vigilant in relation to contractors or consultants who are working for the authority on a short-term basis, or the employees of organisations that deliver local authority services.

Members should not improperly seek to influence the way in which such people carry out their duties.

case examples

Paragraph 3

Paragraph 3(2)(d)

Example 1

This example concerns a member seriously compromising the impartiality of officers.

A member inappropriately interrupted an informal meeting between council officers and trade union members to give his opinion on council staffing matters. His son was a council employee. The member threatened to sack an employee and was aggressive and abusive.

The tribunal found that the member's interruption of the meeting had irretrievably compromised the officers' impartiality in dealing with the trade union members. The tribunal considered that the member had put pressure on the officers to accept his suggestions on staffing issues.

Example 2

Example 2 concerns a member compromising the impartiality of officers dealing with parking issues.

The complainant alleged that a member asked the chief executive of a police authority and the authority's employees to arrange for his car parking fine to be withdrawn. The ethical standards officer considered that the member compromised the impartiality of the authority's employees by placing pressure on them to deal with his personal parking fine.

Example 3

This example concerns making false allegations against officers.

A member claimed that two members of another political party had intimidated a council officer into delaying the clean-up of an estate.

The case tribunal considered that the statements were false and seriously damaged the reputations of the councillors and the council officer concerned. It concluded that the member acted in a way that was likely to compromise the council officer's impartiality by falsely claiming that he had yielded to improper pressure.

notes

Paragraph 3

notes

Paragraph 3

THE CODE OF CONDUCT

Paragraph 4

Confidentiality

Paragraph 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.

Q&A

Paragraph 4

Q29: What is meant by "information"?

Information is a broad term. It includes facts, advice and opinions. It covers written material, including tapes, videos, CDs, DVDs and other electronic media.

It covers material in unwritten form, including intellectual property.

Q30: What is meant by "confidential"?

Information can only be confidential if all of the following apply:

- It has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be).
- It was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential).
- Disclosure of it would be detrimental to the party wishing to keep it confidential.

Section 100A(3) of the *Local Government Act 1972* defines 'confidential information' – for the limited purposes of preventing public access to the meetings of certain types of authority (excluding parish councils) – as:

(a) Information supplied to the council by a government department upon terms (however expressed) which forbid the disclosure of the information to the public.

(b) Information which is prohibited from being disclosed to the public by or under any enactment or by order of a court.

An authority also has the power to exclude the public from a meeting during an item of business whenever it is likely that there would be disclosure to them of 'exempt information'. The categories of exempt information are set out in Schedule 12A of the *Local Government Act 1972*.

Examples are:

- Personal information about an individual's employment or financial situation.
- Labour relations matters between the council and its employees.
- Enforcement matters.
- Information that attracts legal professional privilege.

Information that is 'exempt' may be disclosed if the public interest in disclosing the information outweighs public interest in maintaining the exemption.

This means that disclosure of confidential information (as defined by Section 100A(3)

Q&A

Paragraph 4

Local Government Act 1972) by a member will be a breach of the Code, but disclosure of exempt information may not be. However, this is only if the member can show that the public interest in disclosure outweighs the public interest in maintaining the exemption.

This publication has already considered some technical meanings of the word 'confidential'. In a more general sense, internal discussions between members and officers may also be confidential – for example, if they concern emerging council policy. In addition the term can include matters of commercial sensitivity, or security.

Q31: What is meant by "of a confidential nature"?

This phrase covers situations where a member becomes aware of information accidentally or through a third party. Information of a confidential nature goes beyond the very narrow definition of confidential information given in Section 100A(3) of the *Local Government Act 1972*.

Information is not confidential or of a confidential nature solely because the originator or the person concerned would prefer the information to be kept out of the public domain.

However, there may be contractual reasons why information may be of a confidential nature, for example because of a confidentiality clause in an agreement, or if it is sensitive commercial information, which could result in a breach of contract if disclosed.

Matters of commercial sensitivity, which may at one time be exempt, may later become public information – for example in relation to a local authority property transaction. In considering whether a breach had occurred, timing would be a major factor to take into account.

Under the *Freedom of Information Act 2000*, information must be provided to an applicant unless an exemption applies. Information that would not be released under the *Freedom of Information Act 2000*, is confidential or of a confidential nature. Other information is unlikely to be.

Q32: When can a member disclose information of a confidential nature without being in breach of the Code of Conduct?

If members believe the information is confidential they must not disclose it, except in the following circumstances:

- They have the consent of the person authorised to give it.
- They are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, from a lawyer or other professional adviser)

Q&A

Paragraph 4

provided that person agrees not to disclose the information to any other person.

- The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
  - **(i)** The disclosure must be reasonable.
  - **(ii)** The disclosure must be in the public interest.
  - **(iii)** The disclosure must be made in good faith.
  - **(iv)** The disclosure must be made in compliance with any reasonable requirements of your authority.

Q33: Who is "authorised to give" consent to the disclosure of confidential information?

The person who originally provided the information given in confidence will normally be authorised to give consent to its disclosure.

However, this authority may be overridden if there is a conflict between the willingness to disclose the information and the intrinsically confidential nature of the information.

This is the case even if the disclosure is agreed by the person who originally provided the information. Where information is "given [...] in confidence" but is also genuinely confidential in nature, an objective assessment of interests is called for. It will not always be enough for the person who originally provided the information to the member to consent to its wider disclosure. The member may need to ask another person who is in a position to balance any competing interests involved.

Q34: When will a person be "required by law" to disclose information?

There will be a wide variety of circumstances where a person is required by law to disclose information.

The most obvious example is where a person is summoned to give evidence in a court of law. The general rule is that a person is required to disclose whatever evidence is relevant to the issues before the court, although there are notable exceptions to this rule (for example, information that attracts legal professional privilege).

However, there are many other circumstances where members may find themselves required by law to disclose information. Section 62 of the *Local Government Act 2000* gives ethical standards officers the right to request, from anyone, any information or explanations that are necessary for their investigations. It is a criminal offence not to comply with such a request.

Q&A

Paragraph 4

Q35: What factors do you need to take into account when deciding whether the disclosure is "in the public interest"?

The four requirements to be met are outlined in more detail below.

1) The first requirement, that the disclosure must be reasonable, requires a member to consider matters such as:

   - Whether there is a genuine belief that the information disclosed, and any allegation contained in it, is substantially true. The disclosure is unlikely to be reasonable if this belief is not held.

   - Whether the disclosure is made for personal gain. If the disclosure is paid for, it is unlikely to be reasonable.

   - The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable to disclose the information to the world at large through the media.

   - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.

   - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.

   - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to recur.

   - Whether the disclosure involves a member's authority failing in a duty of confidence owed to another person.

2) The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following or something of comparable seriousness that either has, is, or is likely to happen:
   (a) a criminal offence
   (b) a member's authority or some other person failing to comply with any legal obligation to which they are subject
   (c) a miscarriage of justice
   (d) the health or safety of any individual being in danger

Q&A

Paragraph 4

(e) the environment being damaged
(f) information tending to show any matter falling within (a) to (e) being deliberately concealed

3) The third requirement, that the disclosure is made in good faith, will not be met if the disclosure is made with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

4) The fourth requirement is that the reasonable requirements of the member's authority have been complied with, such as an authority's policies or protocols on matters such as whistleblowing and confidential information. This means that before making the disclosure, a member must first raise concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, a member may need to weigh up the public interest in maintaining confidentiality against any public interest favouring disclosure.

This means thinking carefully about how confidential the information is, any potentially harmful consequences of its disclosure, and about any factors which may justify its disclosure despite these potential consequences.

In some situations, it may be extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Q36: Does the right to freedom of expression in the European Convention on Human Rights prevent a disclosure of information being a breach of the Code of Conduct?

No, not of itself. The freedom of expression in Article 10(1) of the Convention is qualified by duties and responsibilities in Article 10(2) and may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society for preventing the disclosure of information received in confidence.

The balance of the public interest in maintaining confidence must be weighed against the countervailing public interest in disclosure (see case example 2 on page 49).

Q&A

Paragraph 4

Q37: What types of information can members of the public access "by law"?

The circumstances where paragraph 4(b) may apply are too wide to list exhaustively here.

Members of principal local authorities can find useful information in the 'Access to Meetings and Documents' provisions contained in Part VA of the *Local Government Act 1972*. Categories of information which are exempt from public access can be found in schedule 12A of the *Local Government Act 1972* (as amended by the Local Government (Access to Information)(Variation) Order 2006 and the Relevant Authorities (Standards Committee)(Amendment) Regulations 2006).

Parish councillors will need to consider the provisions of the *Public Bodies (Admission to Meetings) Act 1960*. These statutory provisions legally entitle members of the public access to certain information.

In addition, Section 81(6) of the *Local Government Act 2000* requires the register of interests, which monitoring officers establish under Section 81(1) of the *Local Government Act 2000*, to be available for public inspection at all reasonable hours. If a member attempted to prevent access to information covered by these provisions, that member would fail to comply with paragraph 4(b) of the Code of Conduct.

Members of local authorities have the right to see documents held by the authority if they can demonstrate a 'need to know'. Overview and scrutiny committees may require members of the executive and officers of the authority to attend before them to answer questions. Withholding information from an overview and scrutiny committee could be a breach of paragraph 4(b) of the Code.

Q38: What is meant by preventing "access to information"?

A member must not prevent any person from accessing information which they are entitled to by law.

This includes information under the *Freedom of Information Act 2000* and the right of access to personal data under Section 7 of the *Data Protection Act 1998*. It includes copies of minutes, agendas, reports and other documents of their authority which they have a right to access.

To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 0845 630 6060.

case examples

Paragraph 4

Example 1

This case example is about a member's right to access the accounts of a council.

The chair of a council took steps to prevent other members gaining access to the accounts of the council. The tribunal confirmed that Section 288(3) of the *Local Government Act 1972* and the common law, taken together, give a member of a council the right to inspect accounts and documents.

The right under Section 288(3) is not limited to approved accounts or to accounts in the public domain. Frustration of these statutory and common law rights by the chair of the council – by not allowing members to inspect the accounts – constituted unlawful withholding of information within the meaning of the Code.

Example 2

Example 2 demonstrates the need to balance the right of freedom of expression with the obligation of confidence under the Code of Conduct.

A member leaked confidential documents to the press about the council's efforts to recover a substantial sum of money from the former leader of the council.

Although the case tribunal acknowledged the public interest in exposing possible inactivity on the part of the council in recovering the debt, it concluded that the overriding public interest was in recovering the money, which required the documents to remain confidential.

The disclosure of confidential documents had taken place when High Court gagging orders were in place. These orders were a proportionate restriction on the right to freedom of expression, given the ability of the former leader to move assets out of the jurisdiction of the courts. Therefore the member was in breach of the Code when he disclosed documents to the press, although in the circumstances no sanction was imposed.

Note: for further details of this case see Chapter 2 of the *Case Review Number 3, Volume 1*, available from www.standardsboard.gov.uk

notes

Paragraph 4

THE CODE OF CONDUCT

Paragraph 5

Disrepute

Paragraph 5

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

Q&A

Paragraph 5

Q39: When does paragraph 5 apply?

Paragraph 5 applies when members are:

- Acting in an official capacity. In other words, whenever they conduct the business of their authority or act, claim to act, or give the impression they are representing their authority. This includes a situation where they represent their authority on any other organisation including another relevant authority.

- At any other time, where that conduct constitutes a criminal offence for which they have been convicted (however, see Q9 on page 15).

Usually it will be obvious to members whether or not they are acting in an official capacity, for example discussing council business at a council meeting.

Q40: Are all criminal convictions covered by the Code of Conduct?

No, not until changes are made to Section 52 of the *Local Government Act 2000* (see page 15). For the Code to be broken, there needs to be a link between the criminal conduct which led to the conviction and the performance of a member's functions.

For example, if a councillor is convicted for housing benefit fraud, as inappropriate as this behaviour might be, it has most likely occurred in a private capacity. This is because applying for housing benefit is not part of a councillor's role.

However, if the fraud arose by a member using their role as a councillor to pressurise a housing benefit officer into granting the benefit then this would be a case where paragraph 5 might apply, if the fraud resulted in a conviction. This would be a breach of paragraph 6(a) in any event, even if there were no conviction.

As a rule of thumb, paragraph 5 will not apply if a member's conduct cannot be reasonably viewed as being connected to their role as a councillor. This is rather than as a private individual or as a member of a political party, for example. It can be particularly difficult to separate the actions of a member as a councillor and as a politician.

The following example may help. If a member is guilty of violent conduct at a political group meeting of councillors, then that behaviour is likely to be caught by the Code. The same behaviour at a local branch meeting of a political party is not likely to be. For further examples, see the case examples for this paragraph on page 57.

Q&A

Paragraph 5

Q41: What kind of conduct is covered by 'performing functions'?

Section 52 of the *Local Government Act 2000* includes a requirement for members to be bound by the Code of Conduct when performing their functions. Members should always remember that their actions may reflect badly on the office of councillor or the authority on which they serve. Anything done in an official capacity (see definition in paragraph 2(1) on page 14) can be covered by paragraph 5 of the Code. 'Performing functions' means acting in this capacity.

The following are examples of the kind of conduct seen as performing the functions of the office. Criminal conviction for this sort of behaviour could amount to a breach of the Code.

For example, a member attends a private council pre-meeting to discuss a report, which includes a proposal to buy some land for council purposes. The members are told by officers that they are being given sensitive information on a confidential basis.

Immediately after the meeting, the member contacts the owner and agrees to buy the property for the price quoted to the council. Although buying the land was not done as a councillor, the member was performing their functions when finding out the sale price and that it was for sale.

Certain activities may appear to be related to the functions of a member but are not. For example, when canvassing for re-election, a member is likely to be acting in a private capacity as a political candidate, but not as a member. This is because it is not the function of a councillor to get re-elected.

Q42: What distinguishes disrepute to "your office or authority" from disrepute to you as a person?

A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of private capacity conduct, for example drink-driving or petty theft, may damage the reputation of an individual but will rarely be capable of damaging the reputation of the office of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the office of member or to the authority in particular cases:

1) Situations where members have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their office.

Q&A

Paragraph 5

For example, councillors using their position to secure a secret personal profit.

2) Similarly, situations where a member defies important and well-established rules of the authority for private gain.

3) Where a member engages in conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider. For example, they are convicted for sexual offences against children when running a private care home providing services to the council.

Q43: What is "disrepute"?

In general terms, disrepute can be defined as a lack of good reputation or respectability.

In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:

1) Reducing the public's confidence in that member being able to fulfil their role; or

2) Adversely affecting the reputation of members generally, in being able to fulfil their role.

Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute.

Under the Code, a criminal conviction in appropriate circumstances can have the same effects (see Q9 on page 15).

Q44: What is the significance of the words "could reasonably be regarded"?

An officer carrying out an investigation about someone allegedly breaking the Code of Conduct does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of an authority, in order to show a failure to comply. The test is whether or not a member's conduct "could reasonably be regarded" as having these effects.

This test is objective and does not rely on any one individual's perception. There will often be a range of opinions that a reasonable person could have towards the conduct in question. Members will have failed to comply with the Code if their conduct "could reasonably be regarded" by an objective observer as bringing their office or authority into disrepute.

Q&A

Paragraph 5

Q45: Does paragraph 5 solely relate to criminal conduct?

No. It is quite possible, for instance, that activity which brings the honesty and integrity of a member into question will not constitute any criminal offence.

However, it would still be reasonable to regard such behaviour as bringing the member's authority into disrepute.

Dishonesty in relation to official duties will clearly be a cause of particular concern.

case examples

Paragraph 5

Example 1

This example looks at when members may be performing the functions of their office. It also shows how this could include a range of activities that do not obviously appear to be an exercise of those functions.

A councillor accessed and downloaded inappropriate material on the internet using a computer provided by the council. He was cautioned by the police for doing so. Even though that activity may be perceived as private in nature, it constituted behaviour which brought his office into disrepute as he had used the council's equipment.

Example 2

Example 2 concerns disreputable conduct which is more closely related to being a councillor.

A councillor used council notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking penalties dishonestly. He was found to have brought his office and authority into disrepute.

Example 3

This example concerns clearly disreputable conduct by a member.

A member and others rented allotment plots from an association which was planning to repossess them. The member was chairman of a local partnership, which offered grants of up to £5,000 to community regeneration projects. He suggested in a letter that he might be able to obtain funding for the association if the decision to repossess the allotments was reconsidered.

The case tribunal considered that the letter was an offer from the member to influence and secure a grant for the association in return for the withdrawal of proceedings against him and the others. It also considered that the letter abused his position of trust as a member and deliberately sought his own personal gain. It therefore brought his office into disrepute. The case tribunal decided to disqualify the member for one year.

notes

Paragraph 5

THE CODE OF CONDUCT

Paragraph 6

Misuse of position or resources

Paragraph 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 a 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.

Q&A

Paragraph 6

Q46: What kinds of attempts to secure advantages or disadvantages would be improper?

There are circumstances where it will be proper for a member to seek to confer an advantage or disadvantage and other circumstances where it will not.

For example, there can be no objection to members voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that members' attempts to secure this advantage are clearly part and parcel of their duties as a local representative. Therefore, these activities are not improper.

The term 'improperly' is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that members are elected or appointed to public office to serve the public interest.

A member's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a member's public position to promote private interests over the public interest will be improper.

Q47: What if the attempt to confer an advantage or disadvantage fails?

The wording of the Code of Conduct makes it clear that paragraph 6(a) covers failed attempts as well as situations where an advantage or disadvantage has actually been achieved.

Q48: When does paragraph 6(a) apply?

It applies when members are:

- Acting in an official capacity.
- At any other time, where that conduct constitutes a criminal offence for which they have been convicted (but see Q9 on page 15 and Q40 on page 53).

Paragraph 6(a) applies to a member's conduct when acting in an official capacity.

It also includes when a member acts, claims to act or gives the impression that they are acting as a representative of their authority. It is never acceptable for members to use their public position or seek to use that position to further purely private interests. See case example 1 on page 64 for a situation where a member improperly used his position to further his own political interests.

If amendments to Sections 49-52 of the *Local Government Act 2000* are made by Parliament in the autumn of 2007, paragraph

Q&A

Paragraph 6

6(a) will also have effect at any time when the conduct constitutes a criminal offence for which a councillor has been convicted.

Q49: What are the "resources of your authority"?

The resources of the authority include services and facilities as well as the financial resources of the authority.

Resources could include any land or premises, equipment, computers, and materials. The time, skills and assistance of anybody employed by the authority, or working on its behalf, are also resources, as is information held by the authority which it has not published.

Q50: How will members know what the authority's reasonable requirements for the use of resources are?

The Standards Board for England strongly recommends that local authorities have protocols dealing with the use of authority resources. These protocols should be comprehensive and cover the following topics:

- use of authority premises
- member-officer relationships
- information technology, for example computer equipment and the use of associated software, including the use of such equipment at home
- telephone and fax
- photocopying
- use of stationery and headed notepaper
- postage
- use of authority transport
- allowances and expenses

The key principle underlying all such protocols should be that public office and public resources should not be used to further purely private or party political purposes.

It is worth noting that where a member authorises someone such as a family member to use the authority's resources, the member must check whether the authority's rules allow this.

Q51: What constitutes using resources "improperly for political purposes"?

Paragraph 6(b)(ii) acknowledges that party politics has a proper role to play, both in the conduct of authority business and in the way that members carry out their duties.

There will be times when it is acceptable for political groups to use the resources of the authority, for example, to hold meetings in authority premises. Often it is impractical to separate a member's political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents.

Q&A

Paragraph 6

However, members and monitoring officers will need to exercise considerable vigilance to ensure that this provision is not abused. They must ensure that there is a sufficient connection between the use of resources and the business of the authority. Only improper use of resources for party political purposes will be a breach of the Code of Conduct.

Paragraph 6(b)(ii) of the Code complements Section 2 of the *Local Government Act 1986*, which prevents the publication of material "designed to affect public support for a political party".

This sub-paragraph goes considerably further than Section 2 of the *Local Government Act 1986* and the Code of Recommended Practice on Publicity. It covers not only the publication of campaigning material but also any other activity that is intended to promote purely party political interests.

Members must have regard to any applicable local authority code of publicity made under the powers contained in Section 4 of the *Local Government Act 1986*. Publicity is defined as “any communication, in whatever form, addressed to the public at large or to a section of the public”. It will cover meetings and websites as well as printed and other written material.

The current Code of Recommended Practice is designed to ensure proper use of public funds for publicity and to set out principles of good practice which local authorities should apply.

The context in which a member acts will obviously be important in relation to paragraphs 6(b)(ii) and 6(b)(iii). Members should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using their council’s resources in these circumstances, they should not appear to be seeking to influence public opinion in favour of them, their party colleagues or their party.

case examples

Paragraph 6

Example 1

This case example deals with a member's attempts to gain political advantage improperly for himself over an opposing political group's member while she was on maternity leave.

The member wrote a newsletter article suggesting that constituents could contact him with their problems while the female member was on maternity leave. The two members' wards were due to be merged and the female member complained that the article was an improper use of the other member's position, aimed at acquiring political advantage.

The female member had stated in an earlier letter to a local newspaper that she was still actively engaged in work for the authority and that arrangements had been made to support her during her maternity leave, although she had been unable to attend evening meetings since the birth of her child.

The ethical standards officer found that the member had improperly used his position to secure an electoral advantage for himself and had promoted his name and his availability to constituents while the female member was on maternity leave.

Example 2

This example concerns a member seeking to confer a financial advantage on an organisation and a person.

The member failed to declare a personal interest and failed to leave the room when the town council's finance and general purposes committee discussed an application for a grant from the town band, of which he was the chair.

He also falsely informed the district council that the town council's environment and planning committee had supported a planning application made by the town clerk, who was a friend of his. The committee had only resolved to hold a site visit. He spoke in favour of the application at the committee's meeting.

The case tribunal decided that the member had a personal and prejudicial interest at the meeting in the consideration of an application for a grant to the town band.

case examples

Paragraph 6

The tribunal decided that the member also had a personal and prejudicial interest in the clerk's planning application and that the member brought his authority into disrepute and improperly conferred an advantage on the clerk.

The tribunal decided that the member should be suspended for 12 months from the town council's planning committee and finance and general purposes committee.

Example 3

Case example 3 is about a member seeking to confer an advantage on a number of businesses including his own.

A member, in the week before a meeting to discuss car parking charges, contacted three officers connected to the matter in an attempt to influence the decision.

It was alleged that the member had a personal and prejudicial interest in the matter because he was a director of a company that owned a restaurant in the town centre, and that his customers would be adversely affected by the proposed charges. In addition, it was alleged that the member's wife was also a director of the company and was president of the local chamber of commerce.

The case tribunal decided that he had improperly sought to confer an advantage for town centre businesses, which included his own, and had therefore failed to comply with the Code of Conduct. The case tribunal decided to disqualify him for nine months.

Example 4

This example is about a member seeking to confer an advantage for himself and for an organisation of which he was the chair.

A meeting concerned the council's decision to rent out a playing field to a football club. The member spoke on the matter despite the fact that he was the chairman of a different club, which also intended to use the playing field. The member failed to withdraw from a meeting despite his prejudicial interest.

He also tried to use his position as a member improperly to secure an advantage for his football club. He wrote to the monitoring officer as a councillor objecting

case examples

Paragraph 6

to an agreement to keep the football club off the field. He later took out an injunction against the management committee responsible for the field, using his status as a councillor. This was despite the fact that other councillors had warned him that he did not have their support or the support of the council for the action.

He also phoned the parish clerk to complain about a telegraph pole erected outside his property, and said that he would use her name in an injunction against the person responsible if the clerk did not call him back by the end of the day.

Finally, he failed to register a financial interest in his home in the area of the parish. The case tribunal decided that the member improperly used his position to confer an advantage on the football club, in relation to the field, and on himself, in relation to the telegraph pole erected near his home.

The member was disqualified from office for three years.

Example 5

Example 5 is about using resources improperly for political purposes.

Councillors were offered a website by their authority to use for their role as a councillor. A member used the site to post party political material of his own party and to make political comments about other political parties. His standards committee suspended him from office for three months as a result.

notes

Paragraph 6

notes

Paragraph 6

THE CODE OF CONDUCT

Paragraph 7

Advice of statutory officers and reasons for decisions

Paragraph 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.

Q&A

Paragraph 7

Q52: Does this duty apply to parish and town councillors?

This paragraph is not a compulsory provision for codes adopted by parish or town councils.

Q53: What are the statutory duties of the monitoring officer?

Under Section 5 and 5A (for authorities operating executive arrangements) of the *Local Government and Housing Act 1989* the monitoring officer has the following duty. They must prepare and arrange for a report to be sent to all members, where any proposal, decision or omission by the council or executive is, has, or is likely to lead to a contravention of any enactment or rule of law, or any maladministration or injustice, already investigated by the Local Government Ombudsman.

Members must consider the report within 21 days. This means that a meeting of the full council must be convened to consider the report. Any action which had been proposed is suspended during this time. Where the authority is operating executive arrangements, the report is sent to the executive and a meeting of the executive is convened, with action suspended in a similar way.

The *Local Government Act 2000* imposed new duties on the monitoring officer:

- The establishment and maintenance of a register of members' and co-opted members' interests. The register is of the interests specified in the Code under paragraph 8(1)(a) and any new interests under paragraph 13(2). When giving advice about the registration of interests the monitoring officer is giving statutory advice.

- Further duties arise when a case is referred by an ethical standards officer for local investigation and/or determination, or where an ethical standards officer issues directions to a monitoring officer under Section 66 of the *Local Government Act 2000*. When giving advice about issues relating to these duties the monitoring officer's advice will be caught by paragraph 7.

Q54: What are the statutory duties of the chief finance officer?

Section 151 of the *Local Government Act 1972* provides that every local authority must ensure that one of their officers has responsibility for the proper administration of its financial affairs. Section 114 of the *Local Government Act 1988* places a specific duty on these officers to make a public report in specified cases of actual or anticipated financial misconduct.

Under this section, a chief finance officer is obliged to produce a report if it appears to

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them that the authority, any committee or sub-committee of the authority, or a person employed by the authority or a joint committee, has done or is about to do the following: make a decision that involves the authority incurring any unlawful expenditure or take action that would be unlawful, and likely to cause the authority a loss or deficiency or to enter an unlawful item of account.

Q55: Why are only the chief finance officer and monitoring officer mentioned in paragraph 7(1)?

The chief finance officer and monitoring officer have specific statutory duties to ensure the proper governance of an authority.

Q56: Does the advice given by a chief finance officer or monitoring officer have to be followed?

As a general principle, members should take account of the advice of officers. They do not need to follow it if they believe that they have good reason not to do so. In the case of statutory officers, the situation is slightly different. Members do not have to follow advice offered by a chief finance officer or monitoring officer. However, a member is required to have regard to such advice where it is given under a statutory duty by these officers.

If a member disregards or discounts the advice without lawful reason, this is likely to constitute a failure to comply with the Code of Conduct.

The Standards Board for England anticipates that if an authority, committee or executive were proven to have disregarded such advice without lawful reason, it is likely that all members involved in the decision to disregard it would be in breach of paragraph 7(1) of the Code.

There may be circumstances where it is legitimate to question whether the view of the monitoring officer or chief finance officer is correct. This could occur where the state of the law is genuinely unclear. Members who choose not to take account of such advice from these statutory officers need to be in a position to justify their actions. They need to be able to set out the reasons for their decision and the grounds on which they chose not to follow officers' advice.

It is not possible to give an exhaustive list of reasons that might be considered lawful for members choosing not to follow the advice that a chief finance officer or monitoring officer gives to them as part of their statutory obligations. The range of circumstances that would have to be taken into account simply does not make this practical.

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Paragraph 7

Q57: What are the statutory requirements to give reasons for decisions?

Regulations 3 and 4 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (SI 2000/3272), specify that all decisions taken by members of the executive are "prescribed decisions" for the purposes of Section 22(4) and (5) of the *Local Government Act 2000*. Reasons must be recorded for all such decisions.

The following judicial pronouncement is a useful guide to the proper approach to the duty to give reasons:

"It is trite law that where, as here, an authority is required to give reasons for its decision it is required to give reasons which are proper, adequate, and intelligible…That said, the law gives decision makers a certain latitude in how they express themselves and will recognise that not all those taking decisions find it easy in the time available to express themselves with judicial exactitude." (R v Brent London Borough Council, ex p Baruwa (1997) 29 HLR 915 per Schiemann LJ at 929.)

Members of an executive may fail to comply with paragraph 7(2) of the Code of Conduct if they fail to give proper, adequate and intelligible reasons for a decision.

Q58: What are the other requirements to give reasons for decisions?

Members must comply with "any reasonable additional requirements" imposed by their authority to give reasons for decisions.

For the requirements to be reasonable they will need to be lawful, proportionate, clearly set out and brought to the attention of the relevant decision-makers. It is likely that they will be contained in the authority's constitution as a protocol or part of a protocol. The protocol will also need to be readily available to members.

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Paragraph 8

Personal interests

Paragraph 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).

Please note: each point in paragraph 8 is dealt with separately in this section.

Q&A

Paragraph 8

Q59: What kinds of interests are covered by paragraph 8?

The definition of a personal interest under paragraph 8 is deliberately drafted very broadly.

A personal interest can arise not only from the employment, business interests and shareholdings of the member concerned, but also from those of their relatives or close associates.

The scope of paragraph 8 is much wider than the list of interests that must be registered under paragraphs 13 and 14. This is to enable a relatively wide range of personal interests to be declared in authority meetings without unnecessarily limiting participation.

The wide scope here reflects the policy of promoting transparency in local government that lies at the heart of the Code of Conduct's drafting. The much more restrictive definition of prejudicial interests under paragraphs 10 and 11 ensures that members are not unnecessarily excluded from decision-making.

Paragraph 8(1)(a)

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;

Q60: When will a matter relate to a registered interest?

An example of the very broad drafting of paragraph 8 is the use of the phrase "relates to" in paragraph 8(1)(a).

A personal interest will arise wherever a matter "relates to or is likely to affect" one of the interests registered under the Code of Conduct. There will also be a personal interest wherever a matter affects, or is likely

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Paragraph 8

to affect, the people, organisations or places listed in the member's register of interests.

The Standards Board for England considers that a matter can relate to an organisation either where it directly affects the organisation, or where the organisation is otherwise concerned about the outcome of the matter.

However, there are important limits to this:

- The matter must relate to the organisation concerned. A member of Friends of the Earth does not have a personal interest in all issues that affect other members of Friends of the Earth, and the same principle applies to political organisations.

- Particular caution needs to be exercised in relation to political parties. Membership of political parties should be registered under the Code. However, given the transparently central role that political parties play in local government, it would be impractical for members to declare a personal interest in every matter on which their political party had expressed a view. This is clearly not the intention of paragraph 8.

Q61: What is meant by a body "exercising functions of a public nature"?

The phrase "any body exercising functions of a public nature" is wide in scope and covers more than public authorities.

Case law dealing with bodies amenable to judicial review may be a helpful guide to this issue (for example, R v Panel on Takeovers and Mergers, ex parte Datafin plc [1987] QB 815). However, a function will usually be "of a public nature" where it is underpinned by statute or government.

Although it is not possible to produce an exhaustive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition:

- Does the body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function?
- Is the body (including one providing outsourced services in the private sector) exercising a function delegated to it by a public authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless a member can answer 'yes' to one of the above questions, it is unlikely that the body is exercising functions of a public nature.

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Examples of bodies included in this definition are:

- regional and local development agencies
- other government agencies
- other councils
- public health bodies
- council-owned companies exercising public functions
- arms length management organisations carrying out housing functions on behalf of the authority
- school governing bodies

Q62: What is meant by a body "directed to charitable purposes"?

The reference to any body "directed to charitable purposes" was clearly intended to cover more than organisations that fall within the legal definition of a charity. Any organisation directed towards charitable purposes (as that term is commonly understood), to any significant degree, comes within the scope of these words. Therefore, membership of Rotary or Lions clubs are likely to require registration.

Q63: Is membership of the Freemasons included?

Some but not all Masonic organisations are registered charities with the Charity Commission. Membership of those that are registered clearly falls within the scope of this provision.

However, the reference to any body "directed to charitable purposes" was clearly intended to also cover organisations not falling within the legal definition of a charity. Although ultimately a member must judge the matter for themselves, the Standards Board for England believes that many Masonic organisations will fall within the scope of this provision.

This is reinforced by the United Grand Lodge of England's description of Freemasonry as "…the UK's largest secular, fraternal and charitable organisation".

In the case of R (on the application of Port Regis School Ltd) v North Dorset District Council and another [2006] EWHC 742 (Admin), the judge considered a case about two councillors who were masons. They had been involved in making a decision about a planning application which was submitted by another mason's lodge to which they did not belong. The members had not declared prejudicial interests when the matter came before the committee.

The judge said:
"I have concluded that... freemasonry does not require a freemason, when in local government, to be partial to any other freemason or to the interests of freemasonry. I have concluded that freemasonry, by the standards it requires, underpins the requirements of impartiality and fairness set by the law, for example, by requiring

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observance of the law of the land and that others be treated equally, and that a mason '…be exemplary in the discharge of [his] civil duties…'

"I have concluded that, in the circumstances of this case, membership by the two councillors of the general body of freemasonry does not give rise to apparent bias in connection with the decision of the full Council... and the application for judicial review is dismissed."

Q64: Is membership of religious organisations included in the scope of paragraph 8?

Generally religious organisations will not fall within the scope of paragraph 8.

The principal purpose of most religious organisations is to provide a focus for religious worship and the common life of the particular faith community that the organisation serves. The influence of public opinion is normally not a principal purpose. Likewise, although a religion may encourage charitable virtues, this will not make it a body directed to charitable purposes.

The Standards Board for England does not consider that paragraph 8(1)(a)(ii)(cc) was primarily intended to apply to religious organisations. However, members should register their religious organisation if one of its principal purposes is to influence public opinion or policy. Similarly, it will need to be registered if it is a registered charity or directed to charitable purposes.

Paragraph 8(1)(a)(iii) and (iv)

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

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

Q65: What is meant by "employment or business"?

Employment or business covers any activity that generates income for the member. Employment can also cover voluntary work.

It will not cover unearned income (from property or investments) unless the person concerned plays an active role in the management of those assets.

Q66: How much detail do members have to include in the register about their employment or business?

Lengthy or detailed descriptions are not required here as the purpose of the entry is to identify the interest.

The member's job title will normally be sufficient to identify the nature of their employment. A brief description of the nature of a business will also be acceptable. Where the member is employed, the name and address of the employer should also be given.

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Paragraph 8

Q67: What is meant by the requirement to register the name of the person who has "appointed" the member?

The phrase "has appointed you" in paragraph 8(1)(a)(iv) is somewhat obscure. It applies to bodies with which a member has a traditional employer/employee relationship and, probably, a contract of employment. It is also intended to cover organisations that have appointed the member to an office, for example to the board of a government agency or as a magistrate.

The Standards Board for England does not consider that this paragraph obliges self-employed members to register a list of all their clients. Such a requirement would clearly be disproportionate and involve the disclosure of confidential commercial information.

Nevertheless, regular clients may be classed as a "person with whom you have a close association" and so fall within the meaning of paragraph 8(2)(a). This means a member will have to declare a personal interest in certain circumstances (see page 89).

The phrase will apply to members who have been appointed to a particular post but who have not yet taken up employment.

Paragraph 8(1)(a)(v)

(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;

Q68: What details does a member have to register about his or her political funding?

The Standards Board for England does not draw a distinction between direct financial assistance such as payments of money directly to the councillor for election or other expenses, and indirect assistance such as payment for election posters or leaflets.

Members should register any person or organisation who made a financial contribution (whether direct or indirect) to their election campaign or who assists them with the costs of carrying out their duties. This may include the member's political party.

Members should also register any person or organisation providing premises that relate to a member's official duties, such as the location of a ward surgery, unless the member is paying a commercial value to use them.

Members are not required to register details of their political group's funding.

Q&A

Paragraph 8

Paragraph 8(1)(a)(vi)

(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);

Q69: What is meant by "place of business"?

Place of business refers to business premises rather than a piece of equipment (such as a telephone box or an electricity substation).

However, if the person or body owns the land on which a piece of equipment such as a telephone box or an electricity substation is situated, then the requirement to register will apply because the body concerned will have "land" in the area.

Q70: What is meant by "beneficial interest"?

A beneficial interest is one where the owner of the interest is entitled to benefit from the asset concerned.

Such an interest can arise directly through the legal ownership of an asset, or indirectly where the member concerned is the beneficiary of a trust.

Use of the term "beneficial interest" excludes those who hold assets under a trust but are not beneficiaries of that trust. In such situations the trustee holds the legal title to the assets in question but has no beneficial interest to register.

Q71: What does a "class of securities" mean?

The term "class of securities" includes any instrument (such as a share, stock, bond or option) that indicates some form of ownership rights or creditor relationship with a particular body.

In practice, shares are the most commonly encountered form of securities.

Q72: What does "nominal value" mean?

The nominal value of shares is usually the face value declared on the share certificate when issued. This contrasts with its market value, which can often be considerably more but may be less.

A nominal value of more than £25,000 is set for the inclusion of shareholdings in the publicly available register of interests. Therefore, only very substantial shareholdings need to be included in the publicly available register of interests.

A member who holds a small number of shares in a large public company of the kind

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that result from a privatisation issue, or a building society becoming a company, is unlikely to need to register them.

However, this high threshold is considerably offset by the alternative criteria (more than one hundredth of the total issued share capital). Comparatively modest shareholdings in smaller companies will be caught by this requirement.

Paragraph 8(1)(a)(vii)

(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);

Q73: How much detail is required by the description of "any contract"?

Enough detail should be given to identify the contract, such as the date and a brief description of the goods, services or works being contracted for.

There is no requirement to state the value of the contract or its terms.

Paragraph 8(1)(a)(viii)

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

Q74: Do members have to declare all "gifts or hospitality" they receive?

A member only has to declare those gifts or hospitality received as a member.

The member must apply honesty and common sense when they consider how receipt of a gift might be interpreted. For example, if the member is the chair of the planning committee and a birthday present arrives from an applicant just before a planning application is due to be considered, then the member needs to think about how this would be interpreted by a reasonable member of the public.

A member should register gifts and hospitality if they could reasonably be viewed as relating to a member's official duties. This will not normally include gifts from friends or family.

Q75: Does the value of £25 apply to each individual gift or to the total value of gifts given? How does the notification threshold of £25 work in practice?

A degree of common sense needs to be applied here. Where a series of small gifts come from the same source over a short

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period of time and the cumulative value of the gifts is over £25 they ought to be registered.

Q76: Does a member have to declare gifts that are refused?

No. The Code of Conduct only requires a member to declare those gifts that are accepted.

Q77: Does a member have to declare the source of gifts?

Yes. The Standards Board for England believes that the donor should be registered. Without such information the register will be of very little use.

Q78: What does "hospitality" mean?

Hospitality can be defined as any food, drink, accommodation or entertainment freely provided or heavily discounted.

Q79: How should members assess the value of hospitality received?

The Standards Board for England believes that the best way to preserve transparency is for members to assess the hospitality on offer, whether it is accepted or not.

This is because it would clearly not be in the member's interests to be drawn into arguments about how much they themselves ate or drank at a particular occasion. For example, members may find themselves at a function where relatively lavish hospitality is on offer but they choose not to accept it. A member may go to a champagne reception but only drink a glass of orange juice.

As a guide the member should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. Clearly where the member is in any doubt the prudent course is to register the hospitality.

Q80: Do members have to declare hospitality extended to them in the course of their authority's business, such as official dinners or business lunches?

The focus of the Code of Conduct is on the source of the hospitality and its nature. The Standards Board for England does not consider that hospitality should be registered where it is provided by the authority or where it is clearly ancillary to the business being conducted, such as an overnight stay for an away-day. Therefore, hospitality at a civic reception or mayor's ball would not need to be registered.

However, the hospitality should be registered if it is provided by a person or body other than the authority, and is over and above what could reasonably be viewed as ancillary to the business conducted.

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Members might meet dignitaries or business contacts in council offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality.

Q81: What is the Code of Conduct's position on the mayor or chair of an authority?

There are no special rules for those who serve as mayor or chair of an authority.

Gifts that are clearly made to the authority, for example a commemorative goblet which is kept on display in the authority's offices, do not need to be registered in the member's register of gifts and hospitality. However, such gifts ought to be recorded by the authority for audit purposes.

Although the mayor or chair may attend many social functions, they are not exempt from the requirement to register hospitality. However, where the hospitality is extended to the office holder for the time being rather than the individual, the Standards Board takes the view that there is no requirement under the Code to register the hospitality.

The question a member needs to ask themselves is, "Would I have received this hospitality even if I were not the mayor/chair?" If the answer is yes, then it must be registered.

Q82: Should details of gifts and hospitality be available for public inspection?

Details of gifts and hospitality are personal interests that need to be made available in the public register of members' interests kept by the monitoring officer under Section 81 of the *Local Government Act 2000*.

Q83: For how long do members need to declare the fact that they received a gift or hospitality to any relevant meeting?

Once three years have passed since members registered the gift or hospitality in their register of interests, their obligation to disclose that interest to any relevant meeting ends. It is the date of registration that is important, not the date the gift or hospitality was received.

Paragraph 8(1)(a)(ix)

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

Q84: How much detail is required of land-holdings?

Sufficient detail should be given to identify the land in question.

An address and, where the address is not sufficient, a field number or map reference will usually meet the requirement.

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Paragraph 8

A plan identifying the land may be useful in some situations but is not a requirement.

Paragraph 8(1)(a)(x) and (xi)

(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;

Q85: Do you have to register the land-holdings of your employers or bodies you have shareholdings in?

No. There is no requirement to list the land-holdings of companies or corporate bodies included in the register. The only requirement is to register any tenancy between such bodies and the authority. Obviously, members can only be expected to register those they ought reasonably to be aware of.

Paragraph 8(1)(b) and (2)

8.1 You have a personal interest in any business of your authority where...

(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).

Q&A

Paragraph 8

Q86: What does "well-being" mean?

The use of the term "well-being" is a good example of the broad drafting of paragraph 8.

Well-being can be described as a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their well-being. It is not restricted to matters affecting a person's financial position.

The range of personal interests is, accordingly, likely to be very broad.

Q87: What does "to a greater extent than" mean in the context of paragraph 8?

No personal interest will arise where a matter affects the member or a relevant person (see paragraph 8(2)) to the same extent as other council tax payers, ratepayers or inhabitants of the electoral division or ward affected by the decision.

So, for example, members would only have a personal interest in a planning application which affected them more than others in the ward affected by the decision.

In Greater London the reference to electoral division or ward is replaced by a reference to the "Assembly constituency". For members in other areas where there are no electoral divisions or wards (typically the case in the areas of small parish councils, police, fire and parks authorities) the reference is to council tax payers, ratepayers or inhabitants living in the whole area.

Q88: Who is classed as "a member of your family"?

A "member of your family" should be given a very wide meaning.

It includes:

- a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity)
- a parent
- a parent-in-law
- a son or daughter
- a stepson or stepdaughter
- the child of a partner
- a brother or sister
- a brother or sister of your partner
- a grandparent
- a grandchild
- an uncle or aunt
- a nephew or niece
- the partners of any of the people above

The term is wide enough to cover anybody related to a member by birth, marriage or civil partnership.

Q&A

Paragraph 8

Q89: What is a "close associate"?

The term "close associate" is a very broad one which is not qualified by a precise definition in the Code of Conduct.

A person with whom a member has a close association is someone that they are in either regular or irregular contact with over a period of time, who is more than an acquaintance.

The Standards Board for England would suggest that it is someone a reasonable member of the public might think they would be prepared to favour or disadvantage when discussing a matter that affects them because of their connection with them.

It may be a friend, a colleague, a business associate or someone whom the member knows through general social contacts. A closer relationship is implied than mere acquaintance.

Members and monitoring officers might wish to consider the following questions when deciding whether a close association exists:

- How many times do the two people meet?
- Where do they meet?
- Do they regularly attend the same social events?
- Do they know each other's families?
- Do they visit one another's homes?
- Do they have regular business dealings?
- Do they work for the same organisation?
- Are they close or connected in other ways?

These questions should never be taken in isolation. It is the cumulative evidence of these factors and others like them that will establish a close association.

A certain amount of caution should also be exercised. Most members know each other and will often attend the same functions because of their positions in the community.

A level of relationship above and beyond that which usually exists between colleagues and political associates will be required to establish the existence of a close association. Simply sitting on the same committee as a fellow councillor or sharing car journeys will not create a close association in itself.

Q90: What about enemies?

Circumstances will arise where there is clear personal hostility or resentment between two people. For example, this could be after an acrimonious divorce or where one person has been involved in the termination of another person's employment.

Where such hostility or resentment exists between a member and someone affected by an issue before the authority, it seems likely that a personal interest will arise.

Q&A

Paragraph 8

Paragraph 8 does not appear to have been drafted with this situation in mind but the Standards Board for England's view is that in these circumstances a member's "well-being" will be affected (see case example 3 on page 93).

It is also possible that such people may be individuals with whom the member has a "close association".

Examples of personal interests:

a) A member has a niece. The niece has recently moved in with her boyfriend who is employed by a local building firm. The firm puts in a bid for work from the authority. The member will have a personal interest (but not necessarily a prejudicial one).

b) A member has an old friend whom she has known since their schooldays. They live 30 miles from each other but meet for lunch two or three times a year. The member's friend has a substantial shareholding (nominal value £20,000) in a business that has been built up by her family for many years, although the friend plays no part in running the business.

The business is likely to be affected by major redevelopment proposals. The member will have a personal interest but may be ignorant of its existence (see Q91 below). The interest will not necessarily be prejudicial.

c) A member has grandchildren who regularly use the authority's school bus service. The member will have a personal interest in relation to any discussion of the school bus service. This will only become a prejudicial interest when it directly affects the child's school.

d) A member has an uncle whom he has not met for ten years. The uncle's wife is on the board of governors of a local school. The member will have a personal interest (but not necessarily a prejudicial interest) in matters affecting the school's financial position.

In all these examples, the connection would need to be known or ought reasonably to be known by the member before it is necessary to declare it at a meeting.

Q91: What if I am not aware of my personal interest?

A member's obligation to disclose a personal interest to a meeting only applies when they are aware of, or ought to be aware of, the existence of the personal interest.

Clearly you cannot be expected to declare something of which you are unaware (see

Q&A

Paragraph 8

paragraph 9(4) of the Code of Conduct). It would be impractical to expect a member to research into the employment, business interests and other activities of all their close associates and relatives. So, in example b) above, the member does not need to declare an interest in the redevelopment proposal if she does not know of her friend's shareholding, but otherwise she would have to do so.

However, a member should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, they should have been aware of.

case examples

Paragraph 8

Example 1

Case example 1 is a high court case about what "well-being" means.

Murphy v Ethical Standards Officer of the Standards Board for England [2004] EWHC 2377 (Admin) concerned a councillor who had participated in the consideration of a report by the Local Government Ombudsman (LGO), which criticised him for failing to declare an interest and withdraw from a meeting of the council's planning committee.

Mr Justice Keith cited the content of Q86 on page 88 above with approval. He considered that it would have been "entirely natural for [Councillor Murphy]…to want to salvage his reputation by getting his council to express dissatisfaction with the report". Therefore it was right to regard the matter as affecting his well-being.

Councillor Murphy argued that he was not unduly troubled by the LGO's report and therefore had no personal interest. However, the court said that it was necessary to consider the matter objectively from the point of view of "an informed outsider".

Example 2

This example is a high court case about who decides whether an interest arises.

In the case of Scrivens v Ethical Standards Officer [2005] EWHC 529 (Admin) Mr Justice Stanley Burnton said:

"Whether a member has a personal or a prejudicial interest is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant. The test for a failure to comply with the Code by failing to comply with [the paragraphs dealing with personal and prejudicial interests] is similarly objective."

case examples

Paragraph 8

Example 3

Case example 3 deals with a situation where there was clear animosity between a member and a candidate for co-option to a council.

A member and her husband were in the final stages of an acrimonious divorce.

The husband put himself forward as a candidate for co-option to the council. His estranged wife was present at the meeting in which the council voted for an election rather than co-option, even though her estranged husband was the only candidate and there were two vacant places. She proposed the resolution for an election. She also attended the meeting at which her estranged husband lost the vote for co-option.

The ethical standards officer considered that the breakdown of the relationship between the member and her estranged husband was such that a member of the public, with knowledge of the facts, would reasonably regard it as so significant as to be likely to prejudice the member's judgement of the public interest.

The ethical standards officer concluded that the member did have a prejudicial interest in the consideration of her estranged husband's co-option and that she should have withdrawn from the meetings that dealt with this matter.

Note: under the new Code, this situation would not give rise to a prejudicial interest as it would be unlikely to affect the estranged husband's financial position and does not concern a regulatory matter. However, paragraphs 5 and 6(a) might apply.

notes

Paragraph 8

THE CODE OF CONDUCT

Paragraph 9

Disclosure of personal interests

Paragraph 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.

Q&A

Paragraph 9

Q92: At what stage of a meeting should a member disclose a personal interest?

Subject to two exceptions (see Q94 below), a member should declare the existence and nature of a personal interest as soon as consideration of the business which gives rise to the interest starts, or as soon as it becomes apparent that they have an interest in it, if this is later.

The Standards Board for England is aware that many authorities deal with declarations of interest by an agenda item at the start of the meeting. The Standards Board for England does not consider that this will generally be of any practical significance. There is no substantial conflict between authorities continuing to have a 'declaration of interests' agenda item and the Code of Conduct.

If members are concerned about their position they can choose to make their declaration when the item of business giving rise to the interest is reached on the agenda of the meeting.

Q93: When does consideration of a matter start at a meeting?

Normally consideration starts once the relevant item on the agenda is reached. It will include the hearing of any evidence and representations or submissions from officers, interested parties or members of the public.

Consideration is not limited to discussions between members about the merits of a particular decision.

Q94: When is a declaration of an interest not necessary?

A member may have already made a written declaration of an interest, which then arises at a meeting. This does not remove the need for that member to declare the existence and nature of that interest at the meeting.

The Code of Conduct's requirements about declaring interests aim to support an open and transparent system of local democracy. Consequently, a member's interests should be accessible to members of the public and the press.

Given this, a verbal declaration is normally required at any meeting where a matter arises in which a member has an interest.

However, if an interest arises under paragraph 8(1)(a)(i) and (ii) (see page 78), a member only needs to declare a personal interest if they decide to speak.

If the interest concerns "sensitive information" which a member does not need to include on their register of interests, they need to declare the existence of that interest but do not need to specify the nature of it.

Q&A

Paragraph 9

Q95: How much detail is required in the declaration?

Subject to what is said in Q94 above, members only need to give enough information for others present to be able to identify the existence and nature of the interest.

For example, a declaration that states "this application relates to land that borders property owned by a friend of mine" is sufficient.

There is no requirement for the member in this situation to provide details of the identity of the friend, the nature of the friendship, or the friend's details of land-holdings.

notes

Paragraph 9

notes

Paragraph 9

THE CODE OF CONDUCT

Paragraph 10

Prejudicial interests

Paragraph 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.

Q&A

Paragraph 10

Q96: Does a prejudicial interest mean that a member also has a personal interest and vice versa?

You cannot have a prejudicial interest unless a personal interest has first been established.

However, a personal interest is not necessarily a prejudicial interest.

Q97: What can amount to a prejudicial interest?

A personal interest will only be a prejudicial interest if all of the following conditions are met:

1) The matter affects a member's financial interests or relates to a licensing or regulatory matter.

2) The matter does not fall within the exempt categories set out in paragraph 10(2)(c).

3) A member of the public, who knows the relevant facts, would reasonably think the member's personal interest is so significant that it is likely to prejudice their judgment of the public interest.

Q98: How does a member judge if an interest is so significant that it is likely to prejudice judgment of the public interest?

The member needs to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation. They must also particularly consider how the circumstances are likely to impact on their judgment of the public interest.

Care needs to be taken when considering this topic. The judgment must be a reasonable one and an interest will only be prejudicial if it can objectively be regarded as significant. Almost any degree of personal involvement or knowledge of the circumstances is likely to affect a member's judgment. A member may well have been elected precisely because of their local knowledge.

For an interest to be prejudicial it must be "likely to prejudice" the member's judgment. In other words, the interest must be likely to harm or impair the member's ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that others reasonably think will positively harm the member's ability to judge the public interest objectively.

Q&A

Paragraph 10

Some general principles should be considered when applying this test:

- Members should clearly act in the public interest and not in the interests of family or friends. Members are custodians of the public purse and their behaviour and decisions should reflect this responsibility.

- Situations where a member shares a personal interest with a very small number of other people (for example, where a particular part of an authority's area will be affected by a decision) should be given special consideration.

The Standards Board for England considers that if a member shares a personal interest with a large number of people, it is less likely that a prejudicial interest will exist.

An interest shared by a member with very few other people living in the same area is much more likely to prejudice the member's judgment than an interest that affects many people living in the area.

However, each case must be decided on its own facts. A member should also consider the nature of the relationship that gave rise to the personal interest. Members may be very close to some of their relatives but barely know others. Clearly the closer the relationship, the more likely it is that a prejudicial interest will arise.

The SOAP test described below may be used to decide whether a member of the public, with knowledge of the relevant facts, would reasonably regard an interest as so significant that it would be likely to prejudice the member's judgment of the public interest:

- **S**elflessness – could any and every possible decision the member made in connection with the matter be regarded as selfless?

- **O**bjectivity – could the member be regarded as being as objective in the matter as his or her fellow members?

- **A**ccountability – could the member's involvement in the matter stand up to public scrutiny?

- **P**ublic interest – would the public interest be harmed by the member's involvement?

Q99: What does "affect your financial position" mean?

This phrase should be broadly construed. A member's financial position can be affected directly or indirectly, favourably or unfavourably, substantially or marginally. Also, members might have a prejudicial interest if what is being discussed at a meeting will affect the financial position of a person or body that gives rise to a personal interest.

Q&A

Paragraph 10

Q100: What does "determining of any approval, consent, licence, permission or registration" mean?

Essentially, this means making decisions about regulatory issues like planning applications, licences issued under the *Licensing Act 2003*, and licences issued for pet shops, dog breeding, petroleum storage, street trading and operating taxis.

The Standards Board for England considers that the word "determining" in this context is wide enough to cover variations, additions, removal and revocation of approvals, consents, licences, permissions and registrations (including conditions attached to them).

In this context, "approval" means some form of regulatory decision-making. It does not have the wider meaning of anything the council is asked to agree to. Also, members might have a prejudicial interest if what is being discussed at a meeting will affect an approval, consent, licence, permission or registration of a person or body that gives rise to a personal interest.

Q101: What does "relate to" mean in this context?

This covers making decisions about issues such as applications made by or approvals sought by the member or one of their interests. However, the provision is wider than that. It could cover consideration, as a consultee, of a decision to be made by another body or person (for example, where a parish council is consulted about a planning application by the local planning authority and a member of the parish council has made the planning application).

A member who belongs to a lobby or campaign group opposing a planning application will have no prejudicial interest when the application is considered simply because it relates to the purposes of the group. However, the member would have a prejudicial interest if the lobby group had submitted the planning application or had land which was affected by it.

A member who is elected on the basis of opposing a planning application and who belongs to a lobby group set up to do so will have no prejudicial interest, since a political stance on a subject does not lead to a personal interest arising.

The issue of predetermination or bias may need to be considered in the examples above. Further information can be found in our occasional paper *Predisposition, predetermination or bias, and the Code*, available at www.standardsboard.gov.uk.

Q&A

Paragraph 10

Q102: What is the effect of paragraph 10(2)(c) of the Code of Conduct?

Paragraph 10(2)(c) provides absolute exemptions for members from the consideration of whether or not they have a prejudicial interest. The circumstances listed in that sub-paragraph cannot give rise to a prejudicial interest.

Q103: Are there any variations for different authorities within paragraph 10(2)(c)?

Paragraphs 10(2)(c)(i) and (ii) do not apply to the following authorities because they do not have responsibility for housing or education:

- parish councils
- police authorities
- the Greater London Authority
- the Metropolitan Police Authority
- the London Fire and Emergency Planning Authority
- fire and rescue authorities
- joint authorities
- the Broads Authority
- national park authorities

case examples

Paragraph 10

Example 1

This example considers the role of a member as an advocate for a constituent.

A member who was a solicitor and also the leader of a council represented an applicant for a taxi licence in a professional capacity at the council's licensing committee meeting. He was not a member of the committee and was not involved in taking any decisions on the application.

The Adjudication Panel for England decided that he had a prejudicial interest in his client's application and that he could not divest himself of his member role to appear as a solicitor before the meeting. He was suspended for six months as this appeared to be a misjudgment on his part rather than action he had taken for an improper motive.

Note: see also case examples for paragraph 12 on page 118-119.

notes

Paragraph 10

THE CODE OF CONDUCT

Paragraph 11

Prejudicial interests – overview and scrutiny

Paragraph 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.

Variations between different versions of the mandatory provisions of the Code of Conduct:

- Paragraph 11 only applies to authorities operating executive arrangements.

Q&A

Paragraph 11

Q104: What is the purpose of paragraph 11?

Paragraph 11 protects the integrity of overview and scrutiny committees.

Members of overview and scrutiny committees should be different from those members who originally took the decision under scrutiny.

The decision-makers can appear before the overview and scrutiny committee to answer questions or give evidence about the decision or action under consideration, but should play no part in the overview and scrutiny committee's deliberations.

Q105: Can a member with a prejudicial interest appear before an overview and scrutiny committee if the public are not allowed to attend?

Yes. Section 21(13) of the *Local Government Act 2000* gives overview and scrutiny committees the power to request attendance from an executive member to answer questions. This is the case even when it is considering an item of business that the general public have been excluded from. The executive member is obliged to comply. This provision will override any restriction under the Code of Conduct.

Similarly, that provision allows an overview and scrutiny committee to invite anyone else, including a non-executive member, to attend. When the committee is considering an item of business from which they have excluded the general public, the Standards Board for England takes the view that the non-executive member should still be able to attend to make representations, answer questions or give evidence.

notes

Paragraph 11

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Paragraph 12

Prejudicial interests – participation

Paragraph 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.

Variations between different versions of the mandatory provisions of the Code of Conduct:

- Paragraph 12(2) does not apply to parish councils which adopt only those provisions of the Code which apply to parish councils. Parish councils need to specifically include paragraph 12(2) in their codes if they want their members to be able to make use of it.
- The words in brackets in paragraph 12(2) only apply to authorities operating executive arrangements.

Q&A

Paragraph 12

Q106: What is meant by a "meeting" in paragraph 12?

"Meeting" means any meeting of:

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

Q107: Does "meeting" also include informal meetings?

No. Informal meetings between members and officers and political group meetings are not covered by the requirement to declare interests (see Q4 on page 8).

However, paragraph 6(a) of the Code of Conduct, which prevents members from using their position improperly, applies at all times.

A member should not use pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest. If they do so they are very likely to fail to comply with paragraph 12(1)(c) of the Code by improperly seeking to influence a decision.

Q108: Should a member declare the existence and nature of a personal interest, which is also prejudicial, before withdrawing?

Yes. All prejudicial interests are also personal interests.

A declaration under paragraph 9 should be made and minuted prior to the withdrawal required under paragraph 12.

Q109: What part can a member play in an item of business in which they have a prejudicial interest?

The general rule is that a member must leave the meeting room as soon as the relevant item of business is being considered.

However, a member can stay if asked to make representations, answer questions or give evidence, provided that the public can attend for the same reason. Once the member has done so they must leave.

If the meeting decides that a member should finish speaking, despite their intention to say more, they must comply with its decision.

Q&A

Paragraph 12

Q110: Can a member declare a prejudicial interest, withdraw from the meeting and remain in the room where the meeting is being held?

No. A member must withdraw from the room and take no further part in the discussion. Although the public may be allowed to observe the discussion and the vote, members are not allowed to do so and must leave the room immediately. Failure to do so may be viewed as an attempt to improperly influence the meeting.

The Code of Conduct's intent here is that a member's presence alone can influence a decision or discussion. For example, it is not acceptable for a member to observe proceedings from the public gallery (see case example 2 on page 118 - R v North Yorkshire County Council ex parte Richardson [2003] EWHC 764 (Admin)).

Q111: Under what circumstances can a dispensation be obtained?

The circumstances in which a dispensation can be obtained are set out in Regulation 3 of the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 (SI 2002/339).

A dispensation can be obtained in two distinct circumstances:

- When at least 50% of those entitled to participate are prevented from doing so by a prejudicial interest.
- When the political balance of the decision-making body is upset.

Dispensations are not granted as a matter of course. The standards committee must be satisfied, in the light of all the circumstances of the case, that it is appropriate to grant the dispensation.

Please note that there is a problem with the drafting of Regulation 3(1)(a)(ii) of the Dispensation Regulations. The criterion is linked to an authority being unable to comply with its duty under Section 15(4) of the *Local Government and Housing Act 1989*.

This duty requires the appointment of committees that reflect the overall political balance of an authority. However, the duty does not arise in relation to individual meetings, either of the authority or its committees. For this reason, it is difficult to envisage circumstances in which the criterion would be met.

We understand that this problem is to be addressed by an appropriate amendment to the regulations. In the meantime we would not recommend that dispensations be granted on the basis of the 'political balance' criterion.

Q&A

Paragraph 12

Q112: How is a dispensation obtained?

Dispensations must be obtained by written application made to the standards committee. The power to grant a dispensation cannot be delegated either to individual members of the standards committee or to officers.

Q113: Should a member publicly declare that they are relying on a dispensation?

Yes, although there is no requirement to do so in the Code of Conduct or the regulations, the Standards Board for England strongly recommends that members publicly declare they are relying on a dispensation. They should do this at the same time as they state the existence and nature of their interest, in order to take part in the consideration of a matter where they have a prejudicial interest. A dispensation does not excuse a member from the need to declare an interest.

Q114: Is it possible to obtain a continuing or ongoing dispensation?

Yes. Regulation 3(2)(a) effectively allows a standards committee to grant a dispensation for a period of up to four years.

The standards committee needs to be satisfied that the criteria for granting a dispensation would be met for the whole period. The Standards Board for England considers that such circumstances will be rare.

Q115: What is meant by an 'improper influence'?

Paragraph 12(1)(c) does not entirely prevent members seeking to influence matters in which they have prejudicial interests. Not all attempts to influence a decision will be 'improper'.

For example, members who submit a planning application may address a meeting at which their application is being considered if the public could do likewise. They could also appoint a planning agent to represent their interests before the planning committee.

Improper influence would be any attempt by members to use their position to further their own interests, in a way that would not be open to ordinary members of the public. For example, private lobbying of members, or officers, involved in the decision-making process is a clear example of improper influence.

case examples

Paragraph 12

Example 1

This case example makes it clear that a member must withdraw from the room or chamber when a matter that they have a prejudicial interest in is discussed.

The chair of a council declared a prejudicial interest in a planning application and vacated the chair. She did not speak or vote on the matter. However, she remained in the room when the matter was discussed.

The ethical standards officer considered that the Code of Conduct's intent in paragraph 12 is clear – the mere presence of a member can influence discussion and decision making. Members must withdraw from the room. It is not enough to remain and stay silent.

The ethical standards officer found that the member failed to comply with the Code by not withdrawing from the meeting room when a matter in which she had a prejudicial interest was discussed.

Example 2

Case example 2 shows that a member with a prejudicial interest cannot attend a meeting as a member of the public.

A member with a prejudicial interest in a planning issue was told that he should not attend a council meeting which was considering the issue. He attended anyway and said that he was attending as a member of the public.

Lord Justice S. Brown in the Court of Appeal in R. (on the application of Richardson) v North Yorkshire County Council [2003] EWCA Civ. 1860 said:

"A member of the authority attending a council meeting cannot, in my judgement, simply by declaring that he attends in his private capacity, thereby divest himself of his official capacity as a councillor. He is still to be regarded as conducting the business of his office. Only by resigning can he shed that role."

case examples

Paragraph 12

Example 3

The following case examples indicate the sort of prejudicial interests that can lead to serious sanctions.

- A parish councillor took part in a council meeting about a playing field despite the fact that he was the chairman of a football club that wanted to use the field. He was given a disqualification of three years.

- A town councillor failed to withdraw from a council meeting about the dismissal of a council employee, who was his niece. He was given a disqualification of two years.

- A councillor failed to withdraw from a council meeting that was considering his son's licensing application for an entertainment venue. He was given a disqualification of 18 months.

notes

Paragraph 12

THE CODE OF CONDUCT

Paragraph 13

Registration of interests

Paragraph 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.

Q&A

Paragraph 13

Q116: Who should members notify when registering their interests?

Members must notify their monitoring officer. Parish councillors must notify the monitoring officer of the district council or unitary authority for the area in which the parish council is situated.

Some difficulties can arise in relation to parish councils. The obvious point of contact for information of this type is the parish clerk. The clerk needs to have an up-to-date copy of the register of interests in order to comply with the public access requirements of Section 81(6) of the *Local Government Act 2000*. It is acceptable for the parish clerk to act as the point of contact between parish councillors and the relevant monitoring officer.

However, members must ensure that there is a system in place for the parish clerk to pass on immediately any information to the relevant monitoring officer. Each individual member is ultimately responsible for ensuring that the relevant monitoring officer is in possession of all the required information.

Q117: What happens when a member is re-elected or reappointed or a new Code of Conduct is adopted?

Members are under an obligation to notify the relevant monitoring officer of their interests within 28 days of election or appointment.

This obligation also applies in relation to re-election and reappointment. It is also likely to apply when a new Code is adopted.

Members are under a continuing obligation to ensure that their register of interests is kept up-to-date. The obligation to re-register in the case of re-election, reappointment or a new Code will usually be satisfied by a letter that confirms that the details held by the monitoring officer are still accurate and that no additional interests need to be added.

notes

Paragraph 13

THE CODE OF CONDUCT

Paragraph 14

Sensitive information

Paragraph 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.

Q&A

Paragraph 14

Q118: What is meant by "sensitive information"?

Sensitive information is information which a member considers could create a serious risk that the member or someone in the member's household would be subjected to violence or intimidation, if it became publicly available.

It may include instances where a member is employed in areas of sensitive employment, such as certain types of scientific research, or where a member is a magistrate or judge involved in criminal cases where they are likely to receive threats.

Q119: What happens if the monitoring officer does not agree that the information is sensitive?

It is for the monitoring officer to decide if the information is sensitive. A member must notify the monitoring officer of the information which they think is sensitive.

If the monitoring officer agrees, this information does not need to be included in the register of interests. However, if the monitoring officer disagrees then it must be registered.

Q120: What happens if the information stops being sensitive?

A member must notify the monitoring officer of any change in circumstances which would mean that the sensitive information is no longer sensitive within 28 days of the change.

The information will be included in the authority's register of interests.

notes

Paragraph 14

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