



**the  
Standards Board  
for England**

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Dear Karl

**Communities in control: Real People, real power: Codes of conduct for local authority members and employees – A consultation**

Thank you for allowing the Standards Board for England the opportunity to comment on Communities and Local Government's proposals for amendments to the code of conduct for local authority members, and the proposed introduction of a code for local authority employees.

This letter and attachment sets out our response to your consultation. We strongly support the principles behind the proposals set out in the consultation document, and in particular the proposal to introduce a national employees' code.

As well as responding to your specific questions, we would like to make the following general comments

**Criminal offence**

We agree with the intention that only 'serious' offences should come under the conduct framework. We can see the merit in your proposed definition of 'criminal offence' for the purposes of the members' code. We believe this would be a workable definition, giving clarity as to where lines could and should be drawn and as such the Board could support this approach.

However the proposed definition – only where there has been a conviction by a court – does not cover all of the criminal offences that you list as serious.

The proposed definition explicitly excludes offences that have been dealt with by police caution. It is the Board's experience that police cautions can be used to deal with a variety of offences ranging from what would be generally regarded as minor offences through to the relatively serious. Thus, we have dealt with cases where members have accepted cautions and been placed on the sex offenders' register rather than face

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prosecution in court. Such an admission of guilt for a serious offence would not be caught by the Code under your definition.

The use of police cautions varies considerably depending on the policy of the police force concerned. Under the proposed definition, for example, members living in different parts of the country, guilty of the same offence of domestic violence, may be treated differently under the code. How they were treated would depend on whether they lived in an area where domestic violence offences are always prosecuted, or whether local policy dictates that a caution is appropriate. Indeed, current Government policy is, we understand, to encourage enforcement other than through the courts wherever appropriate.

To exclude police cautions from the definition would introduce these inconsistencies into the standards framework, with members being treated differently for similar offences. Ministers may therefore wish to consider whether their priority is a simple and understandable line – as your current definition would produce – or whether they want similar admitted offences to be treated similarly, regardless of the enforcement mechanism.

One real example which you may want to reflect upon relates to a member of Stratford-upon-Avon district council who, in 2002, received a police caution for possessing indecent images of children under the age of 16. He was also placed on the sex offenders' register for five years. In this case the indecent images were downloaded onto a council laptop, and so this conduct would be caught by the current code. However, if the images had been downloaded onto his private computer, it would have been difficult to link the conduct to his official capacity, and the conduct would not be caught by either the current code or the proposed definition. In this case the member was disqualified by the Adjudication Panel for England for 5 years as it was clearly regarded as being at the most serious end of offences regulated.

If you do not want to include all cautions, you may wish to consider expanding the proposed definition to include criminal offences where there is no court conviction, but where the member is placed on the Sex Offenders' Register. Another alternative is to permit local discretion to decide whether or not an offence, which leads to a police caution, has brought the authority into disrepute.

We share your desire to exclude minor criminal offences from the scope of the Code. However, we believe that in some circumstances a member committing a criminal offence – which may be considered relatively minor if it were committed by a member of the public – may bring their authority into disrepute. For example, an environment portfolio holder guilty of fly-tipping, a member of the licensing committee guilty of drink driving or a police authority member caught speeding would all fall outside the proposed definition if they were merely cautioned unless it were widened to allow local discretion.

As a further real example, in 2004 a Herefordshire cabinet member received a formal caution from the council following an incident of fly-tipping. Under the proposed definition this action would not be counted as disreputable as it was not taken to court.

It should be remembered such a conviction – by means of fixed penalty or caution – would not automatically be a breach of the code, as the onus would still be on the local

standards committee to consider whether the actions were such as to bring the authority or office into disrepute. Again, you may therefore want to take Ministers' minds on these particular scenarios to see whether they prefer a clear simple test or greater local discretion wherever there has been some enforcement action. Local discretion may result in inconsistencies – but we would be ready to issue guidance if needed.

Again, if you did not want to widen the definition to bring in all cautions or fixed penalties, you could expand the proposed definition of 'criminal offence' for the purposes of the members' code to include offences where the member's authority is the prosecuting authority, thereby catching some environmental and environmental health offences.

### **Employees' code**

Our other key matter of principle relates to the employees' code. The consultation paper is largely silent on how CLG believes the employees' code should be overseen. The paper states that the provisions of any code will be incorporated in employees' terms and conditions of employment, and so we assume that the intention is that enforcement will be through existing staff disciplinary measures. We believe that this is right and proper and it is a matter for the authority how it wishes to deal with breaches of the code by its officers.

However, we believe that in order to achieve a consistent approach, for example, to ensure that members and officers have a common understanding of what is a prejudicial interest, there should be an explicit statement by CLG that they expect local standards committees to have a role in overseeing the employees' code locally. While some authorities do already give their committees such an oversight, we think it is important there is an explicit recognition of this to help build the strength of standards committees in those areas where they are discouraged from taking a more proactive guiding and preventative role.

Similarly, the Standards Board believes we should have a role in issuing guidance to authorities to ensure there is a consistent and equitable approach. Indeed we are already approached for advice on such matters and intend to produce guidance, which could be done within our existing resources, if we believe there is a demand for a shared understanding.

The attached response addresses more detailed points.

My officials are of course committed to working with you to ensure effective implementation of your proposals and it will remain a key priority of the Board to ensure you are supported.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Chilton', written in a cursive style.

Dr Bob Chilton  
**Chair**