

A Code for the future

A consultation paper on the review of the Code of Conduct for members

Consultation

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1

Introduction

- 1.1 The Code of Conduct was introduced in November 2001 and came into force across all authorities in May 2002. The Standards Board for England has accumulated almost three years' experience of working with the Code of Conduct. It is a practical, living document which needs to reflect the standards of conduct that the public expects of those who represent it, as well as reflecting effective local government practice.
- 1.2 The Rt. Honourable Nick Raynsford MP, Minister of State for Local and Regional Government, has endorsed The Standards Board for England's view that it is now timely to review the effectiveness of the Code of Conduct and explore ways in which it could be improved or clarified. In his speech to the Third Annual Assembly of Standards Committees in September 2004, the Minister stressed that the Government does not want to dilute the basic, underlying principles of the Code of Conduct but rather seek to discover what may be learnt from practical experience of working with the Code of Conduct.
- 1.3 At the request of the Minister, The Standards Board for England is therefore conducting a review of the Model Code of Conduct for members, set out in the *Local Authorities (Model Code of Conduct) Order 2001* (SI No 2001/3575). Following consultation, The Standards Board For England will formulate recommendations for consideration by the Office of the Deputy Prime Minister.
- 1.4 The Code of Conduct, as a guide to the ethical conduct of members, should reflect contemporary views on ethics. The Standards Board for England is alive and responsive to societal and local government community views on members' conduct and ethical trends. The Standards Board for England leads in providing guidance on the Code of Conduct and commissioning research on the local government ethical environment. The Standards Board for England's partnership with the local government community is key to its work.

1.5 The Standards Board for England is aware, from listening to members' and officers' views in workshops at the 2004 conference and from our work liaising with members and authorities, that concerns exist about the Code of Conduct. Concerns have been expressed particularly about the registration of interests, the line between public and private conduct, and personal and prejudicial interests. The results of the Committee on Standards in Public Life's survey of public attitudes towards the standards of conduct of public office-holders also provide key insights into the public's perceptions of elected members and expectations of public ethics. The survey findings show that the general public has high expectations of its elected and appointed representatives. The Standards Board for England is therefore carrying out this consultation to ensure that the Code of Conduct continues to have integrity, standing and relevance to members and the public. It should be noted that the Committee on Standards in Public Life has recently issued its tenth report which, amongst other things, looked at some key issues in the Code of Conduct. While some of these views have been reflected in this document, further consideration will be given to them in the course of consultation. In addition, the House of Commons select committee that oversees the work of the Office of the Deputy Prime Minister and its agencies is currently completing an enquiry into the role and effectiveness of The Standards Board for England. Any views arising from that enquiry will also be considered as part of the consultation exercise.

Purpose of the consultation

1.6 The purpose of this consultation is to review the effectiveness of the Code of Conduct and explore ways in which it could be simplified, clarified and improved. This review takes as its starting point the need for the Code to continue reflecting key principles of conduct expected of members and ensuring that the Code and The Standards Board for England's guidance provide an appropriate and proportionate ethical framework for members in which high standards of conduct can be achieved. The aim of this exercise is not to address the role or operations of The Standards Board for England, review its referral thresholds or discuss whether particular matters merit investigation in individual cases.

1.7 The consultation is being conducted across a number of different audiences.

The Code of Conduct regulates the conduct of individual members, who therefore have an interest. Monitoring officers and standards committees also have an interest, in terms of promotion and enforcement of the Code of Conduct. Finally, the Code of Conduct is, of course, in place to promote public confidence in local democracy, and the public have an interest in the ethical standards to which their elected representatives will be working. Responses to the consultation will be analysed and fed back to the Office of the Deputy Prime Minister and to the local government community.

- 1.8 The Standards Board for England believes that it is important to use this consultation exercise as an opportunity to ask whether the Code of Conduct captures all the conduct it should, and to focus on areas of the Code of Conduct which are contentious or may need clarification. For this reason, the consultation paper focuses on specific sections of the Code of Conduct. It seeks views on whether, and if so how, the Code of Conduct should be modified. The Standards Board for England also welcomes opinions on sections of the Code not covered here and issues not raised.

Gender usage note

- 1.9 The Standards Board for England endorses work practices promoting gender equality, including publications' use of gender-neutral language. The Code of Conduct is governed by the *Interpretation Act 1978*, which requires that legislation and statutory instruments are written using the male pronouns but states that references to the male gender are implied also to refer to women. While The Standards Board for England believes that the Code of Conduct should use gender-neutral language, it is not possible without a change to the primary legislation. However, The Standards Board for England encourages authorities to use gender-neutral language in their local codes. Apart from direct references to the Code of Conduct and legislation, this consultation paper uses gender-neutral language.

Responding to the consultation paper

1.10 You can respond to this consultation paper by e-mail, on paper, or online:

- By post, please send your comments to:
Emma Ramano
The Standards Board for England
First floor, Cottons Centre
Cottons Lane
London SE1 2QG
- By e-mail, please send your comments to:
enquiries@standardsboard.co.uk with the subject 'Code consultation'
- Online, please go to: www.standardsboard.co.uk/codereview/

When commenting, please make clear whether you represent any organisation or group, and in what capacity you are responding.

The closing date for comments is 17 June 2005.

1.11 Further copies of this consultation paper are available from publications@standardsboard.co.uk and by telephoning 020 7378 5110. Please call leaving your name and address, organisation, and a contact number.

1.12 Your responses may be published or otherwise made public unless you ask us to treat them as confidential. If submitting your response by e-mail, please ensure you include your request in the body of the message. Any automatic confidentiality disclaimers generated by your organisation's IT system will be ignored. Confidential responses will be included in any statistical summary of the numbers of comments received and views expressed. Correspondents should also be aware that, in exceptional circumstances, confidentiality cannot always be guaranteed — for example, where a response includes evidence of serious crime.

1.13 The Standards Board for England will publish a summary of responses, which will be available upon request.

2

Background

- 2.1 The Model Code of Conduct for local authorities was provided for under Part Three of the *Local Government Act 2000* and replaced the former national code of conduct. In the report of the Committee on Standards in Public Life's Third Inquiry, the Committee recommended a streamlined and consistent set of arrangements for local government so that both those elected to local government and the public were aware of the ethical standards expected by those serving in public office. Trust needed to be restored between local government and the electorate.
- 2.2 The Code of Conduct was drafted by the then Department of Environment, Transport and the Regions, in consultation with local government representative organisations such as the Local Government Association and the National Association of Local Councils. The Code of Conduct was approved by Parliament in November 2001.
- 2.3 The Code of Conduct aims to capture and reflect, in a practical manner, an acceptable standard of conduct for members. It explains what a member should do in certain circumstances and directs members to consider the public interest when serving their community.
- 2.4 The Standards Board for England was established under the *Local Government Act 2000* as an independent public body to promote and maintain high standards of conduct amongst elected and co-opted members in local government. The Standards Board for England oversees and issues guidance on the Code of Conduct, while ethical standards officers have a statutory function to investigate allegations of misconduct. The Adjudication Panel for England was also established by the Act as the tribunal body responsible for determining cases referred by ethical standards officers. The Standards Board for England's guidance on the Code of Conduct is informed by its own experience of dealing with complaints and investigations, and by the emerging body of case decisions from The Adjudication Panel for England.

2.5 There are certain allegations of misconduct received by The Standards Board for England which, although unsuitable for investigation because of their relatively minor nature when taken in isolation, nevertheless reflect ongoing interpersonal conflicts that may have a detrimental impact on the effective operation of local government. The Standards Board for England believes that alternative dispute resolution avenues such as mediation and conciliation can play a significant role in resolving such disputes. The Standards Board for England's ethical standards officers have recently been granted powers to issue directions to monitoring officers that may include a requirement to seek dispute resolution if they believe, having looked into a matter, that it is a more appropriate route. However, The Standards Board for England itself does not have the power to seek such resolution in lieu of investigation for more minor matters: such a power would require new primary legislation. The Board believes greater use of such dispute resolution could stop matters being reported in the first place and is keen to explore this issue with local government partners. However, such matters are not addressed in detail in this document.

3

The general principles

- 3.1 The Committee on Standards in Public Life recommended the implementation of key principles of conduct in public life. The *Relevant Authorities (General Principles) Order 2001* set out ten principles derived from these recommendations. The Code of Conduct is required by section 50(4)(a) of the *Local Government Act 2000* to be consistent with the general principles, but does not expressly incorporate them. The Standards Board for England's view – as reflected in our publications, the *Case Review* number one (2003) and *Case Review* number two (2004) — is that the general principles are fundamental to interpretation of the Code of Conduct.
- 3.2 The general principles underpin and steer the provisions of the Code of Conduct. Increasingly, decisions of The Adjudication Panel for England refer to both the Code of Conduct and the general principles when determining breaches of the Code of Conduct. The equivalent Scottish code of conduct includes key principles similar to the general principles that underpin our Code.
- 3.3 Given these factors, and the integral role of the general principles in interpretation of the Code of Conduct to date, it is The Standards Board for England's view that these general principles should be included as the preamble to a revised Code of Conduct. This would help to provide context for the rules of the Code itself, which could assist in interpreting the intention behind the rules when considering individual circumstances. We do not believe that failure to adhere to the general principles should be considered as specific grounds for investigation but believe inclusion of the general principles would reflect a more coherent linking of 'inspirational' and practical standards for members, and would serve to clarify the Code of Conduct further. This view was supported by the Committee on Standards in Public Life in the report of its Tenth Inquiry.

3.4 The ten general principles are:

Selflessness — members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity — members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity — members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability — members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness — members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement — members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others — members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law — members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them

Stewardship — members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership — members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

- 3.5 It should be noted that honesty and integrity and duty to uphold the law apply to members when they are acting in a personal capacity as well as in their role as councillors. This paper discusses in later sections whether the Code of Conduct itself should be restricted only to activities in an official capacity. If that were to happen, these principles may need to be revisited.

Questions

- 1 Should the ten general principles be incorporated as a preamble to the Code of Conduct?**
- 2 Are there any other principles which should be included in the Code of Conduct?**

4

Behavioural issues

4.1 Disrespect and freedom of speech

Paragraph 2 of the Code of Conduct states:

A member must —

- a promote equality by not discriminating unlawfully against any person;*
- b treat others with respect; and*
- c not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.*

4.1.1 Paragraph 2 applies to members only when they are carrying out the duties of the office to which they have been elected or appointed, or when representing their authority in their official capacity. The requirement of paragraph 2(a) not to discriminate unlawfully, and that of paragraph 2(c) not to do anything which compromises or is likely to compromise those who work for or on behalf of the authority, have been easier to interpret than the more general requirement of paragraph 2(b) to treat others with respect, and for this reason The Standards Board for England wishes to focus on paragraph 2(b) in this consultation.

4.1.2 Paragraph 2(b) requires that members treat others with respect when on official council business. ‘Respect’ is a subjective term and it has been The Standards Board for England’s experience that what is perceived as disrespect often varies widely between individuals and between ethnic and local and regional cultures.

The test for ‘disrespect’

4.1.3 Would a tighter definition of ‘disrespect’ better serve to make it less subjective? Though a tighter definition may be easier to apply, The Standards Board for England does not believe that it is the role of the Code of Conduct to be as prescriptive as Parliament is about the language used by members in the House of Commons. Making the definition of disrespect more specific may mean that it would paradoxically become more inflexible and could not seek to reflect a variety of views on what is respectful. The Standards Board

for England believes that respect is an important right and that paragraph 2(b) reflects an important principle and should be retained in its present, broad, form. Clarification of the term 'respect' may rather be found through its application.

Opinion and disrespect

4.1.4 The Standards Board For England believes that members should promote good relations between groups in society. However, it also recognises that members have a right to comment on matters of public concern. They are perfectly entitled to express their views about ideas or groups, including local authority performance issues, provided that their comments do not breach discrimination legislation or cross the line into overly personal attacks. The Standards Board for England believes that the present definition of disrespect allows this distinction to be drawn.

Bullying

4.1.5 Bullying behaviour is a matter of particular concern in our society. The Standards Board for England has received a number of complaints alleging bullying by members of officers and fellow members. The Code of Conduct does not contain a specific provision addressing bullying. To date, The Standards Board for England has dealt with complaints alleging bullying under paragraphs 2(b), 2(c) and 4 of the Code of Conduct, which cover the need to treat people with respect, not to seek to compromise impartiality, and not to bring the authority into disrepute.

4.1.6 When investigating allegations of bullying of officers, ethical standards officers will take into account the availability and appropriateness of other avenues of redress within the authority, such as grievance procedures. However, there is a role to be played by using the machinery provided by the *Local Government Act 2000* to investigate and determine allegations of bullying which may not be appropriate to be dealt with by other avenues.

4.1.7 Given that the Code of Conduct already proscribes bullying, in effect, through existing requirements, it may be more appropriate to provide guidance to members on identifying types of inappropriate behaviour and make sure that ethical standards officers and monitoring officers are alerted to the need to spot bullying and treat it seriously. However, The Standards Board for England believes that a new provision specifically addressing bullying will be of significant symbolic and practical value to the local government community, as it will show that bullying is an issue which should be specifically dealt with.

4.1.8 It is proposed that the provision reflect a definition of bullying based on the definition published by the Advisory Conciliation and Arbitration Service (Acas), which reads:

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

Although this definition does not cover one-off instances of bullying behaviour that have been at the root of some allegations received by The Standards Board for England, we believe it would be a useful starting point. We welcome other views on how the issue could be defined, if appropriate. One-off instances are still serious breaches of the Code, of course.

Questions

3 Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

4 Should the Code of Conduct include a specific provision on bullying? If so, should the definition of bullying adopted by the Code of Conduct reflect the Acas definition of bullying?

4.2 Confidential information

Paragraph 3 of the Code of Conduct states:

A member must not —

a disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of the person authorised to give it, or unless required by law to do so.

4.2.1 Paragraph 3(a) prohibits members from disclosing information given to them in confidence or that is acquired and which the member believes to be of a confidential nature. 'Given in confidence' means information that is given in the expectation that it will not be disclosed to anyone else. Information which is of 'a confidential nature' is information that, for whatever reason, is not appropriate to disclose outside a particular group or organisation.

4.2.2 As it is drafted, this is a difficult paragraph to interpret in certain circumstances. There has been a call for this part of the Code of Conduct to be amended, reflecting the distinction between 'information given in confidence' and 'information of a confidential nature', the requirements of the *Freedom of Information Act 2000* which came into effect in January 2005, and a perception in certain quarters that more information considered at council meetings is categorised as 'confidential' than meets the strict criteria.

4.2.3 The Board's view is that, in the light of the new Freedom of Information requirements, it could be enough merely to state that a member should not disclose information which was lawfully confidential or exempt under existing legislation. This would mean that it would not be a breach of the Code of Conduct if it was demonstrated that the decision to treat a matter as exempt or confidential was unlawful.

Public interest defence

- 4.2.4 The Board believes that the intention behind the Code of Conduct is to protect information that is properly confidential, not information that it is convenient or expedient not to release into the public domain or publicise. Members have a duty to ensure good governance of the authority and to protect as confidential only information that is properly confidential. The Standards Board for England acknowledges the call for greater openness and access to information, reflected in the *Freedom of Information Act 2000*.
- 4.2.5 Paragraph 3(a) is intended to act as a bar on disclosure of confidential information. However, some members have claimed that they were forced to suppress information that they believed should have been disclosed for public interest reasons. Some members have disclosed information and in doing so have asserted the motive and the defence that the disclosure was 'in the public interest'. This has led to calls for the inclusion of a 'public interest defence' in the Code of Conduct.
- 4.2.6 On the one hand, there is the argument that releasing confidential information in the public interest should be recognised as a grounds of defence to breach of paragraph 3(a). Others, however, argue that it is more appropriate to consider the public interest issue as an argument in mitigation of a breach, rather than a distinct defence, to be taken into account by the ethical standards officer case tribunal or standards committee.
- 4.2.7 Under the Freedom of Information rules, a local authority must seek to balance the need to maintain confidentiality where appropriate and the public interest in disclosing information. The Government view is that, when applying the Freedom of Information rules, the presumption should be towards the public interest. If the public interest has not been considered properly, a decision to treat a matter as confidential may not be lawful. Given the relative newness of the Freedom of Information procedures, we shall be seeking to discuss this issue with the Information Commissioner as part of this consultation, but in the meantime we welcome comments on the matter.

Human rights issues

- 4.2.8 Some members have defended their disclosure of information under the right to freedom of expression conveyed by Article 10 of the European Convention on Human Rights. However, that right is subject to qualifications set out in the Article, and The Standards Board for England's view is that the restrictions in the Code of Conduct can be brought within those qualifications.
- 4.2.9 Article 8 of the European Convention on Human Rights prohibits interference by a public authority with the right to respect for private life. There may be a need for members to consider this Article when determining whether information they hold is of a confidential nature, even if the document itself has not, for example, been marked as confidential.

Questions

- 5 Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information?**
- 6 Do you think the Code of Conduct should cover only information which is in law 'exempt' or 'confidential', to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully?**

4.3 Disrepute and private conduct

Paragraph 4 of the Code of Conduct states:

A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

- 4.3.1 This provision applies to members both when on council business and in their private lives. Allegations of disrepute which have arisen in the public domain, such as while the member is on council business, have been far more straightforward to deal with than those which have arisen in members' private lives.

The private/public question

- 4.3.2 Paragraph 4 raises questions about whether, and to what degree, the actions of members in their private lives should be scrutinised and subjected to disciplinary actions. While some hold the view that, when elected, members give up the claim to ‘a private life,’ others believe that the public’s response to the way in which a member may conduct themselves in their private life is essentially a matter for the ballot box. The report of the Committee in Standards in Public Life’s Tenth Inquiry, published in January 2005, recommends that the Code of Conduct should not cover matters which are wholly unrelated to the individual’s official capacity.
- 4.3.3 The Standards Board for England believes that, when interpreting and applying paragraph 4 as currently worded, it is not a question of the general social immorality of a member’s conduct, but whether or not the committal of an act is likely to compromise the reputation of the authority. In order to clarify the scope of paragraph 4, The Standards Board for England believes that the provision should continue to link a member’s conduct in their private life to its relevance to the performance of their public office.
- 4.3.4 The question to be addressed is whether there is a type of conduct, within the wider area of private conduct that should be covered by this provision of the Code of Conduct? In deciding whether to refer complaints for investigation, The Standards Board for England has tended to look at three areas of private conduct:
- cases of unlawful behaviour that would be sanctioned by the courts or the police, such as criminal convictions, police cautions and regulatory infringements;
 - whether the member’s private behaviour brings into question the member’s fitness to carry out their official duties;
 - whether the member’s private behaviour has undermined the public’s confidence in the member’s ability to carry out their official duties.

Illegal activities

4.3.5 The general principles require members to uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them. The Standards Board for England welcomes views on whether the provision should be solely limited to official matters or whether it should cover the wider issues of private conduct enshrined in the principles. In defining further what private conduct should be covered by paragraph 4, the question arises whether there should be a distinction made between activities which are in some way 'unlawful' and activities which certain people may simply disapprove of. If the Code of Conduct is to cover unlawful activities, should it cover both acts which have led to a conviction and acts deemed insufficiently serious to warrant conviction but which are nevertheless seen as somehow demeaning the authority? (Bear in mind that a sentence of three month's imprisonment automatically gives rise to a disqualification.) For example, should there be a distinction drawn between offences that have resulted in a conviction, those where no offence has been proved, and actions that fall short of full conviction, such as police cautions, restraining orders, anti-social behaviour orders, police warnings and injunctions?

Questions

- 7** Should the provision related to disrepute be limited to activities undertaken in a member's official capacity or should it continue to apply to certain activities in a member's private life?
- 8** If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged?

4.4 Misuse of resources

Paragraph 5(b) of the Code of Conduct states:

A member must, when using or authorising the use by others of the resources of the authority —

- i act in accordance with the authority's requirements; and*
- ii ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.*

- 4.4.1 Paragraphs 5(b)(i) and (ii) provide that members must, when using the authority's resources themselves, or authorising others to use them, abide by the authority's requirements, such as its resource protocols. Members must also ensure that the resources are not used for 'political purposes', other than those purposes necessary for a member carrying out the duties of their office — for example, a member using authority letterhead and stamps to respond to constituents' letters or the permitted use of facilities for group meetings.
- 4.4.2 The 'resources' covered by this section of the Code of Conduct include services and facilities beyond an authority's financial resources. 'Resources' includes land, premises and any equipment such as computers, photocopiers and fax machines. The time, skills and help of anyone employed by the authority are also resources.
- 4.4.3 The Standards Board for England understands that the phrase 'political purposes' in paragraph 5(b)(ii) of the Code of Conduct was intended to complement section 2 of the *Local Government Act 1986*, which prohibits the publication of material 'designed to affect public support for a political party'. Paragraph 5(b)(ii) also supplements the Government's Code of Recommended Practice on Local Authority Publicity, issued under section 4 of the 1986 Act.

4.4.4 However, the Code of Conduct for members goes considerably further than the *Local Government Act 1986* and the Code of Recommended Practice. The use of resources for political purposes in the Code of Conduct seems to be a wide enough expression to cover not only the publication of campaign materials but also any other activity which is intended purely to promote political party interests. The circumstances in which a member acts and the intention of the member should be important in relation to this part of the Code of Conduct. For example, when elections are pending, members should be particularly scrupulous about the use of authority resources.

The *de minimis* issue

4.4.5 It has been suggested that the Code of Conduct, as drafted, is too absolute and that it should allow a low threshold for some resource use. However, The Standards Board for England believes that this issue is best dealt with through local protocols. The introduction of a minimum threshold for paragraph 5(b) of the Code of Conduct would set uniform limits across authorities for *de minimis* use of resources, while leaving further regulation of resources to individual authorities. However, local authority protocols need to recognise the impossibility of effectively policing a blanket ban on members' use of local authority resources.

Physical and electronic resources

4.4.6 Of all the areas covered by the Code of Conduct, the use of authority resources is the one which is perhaps most suitable to reflect custom and practice by individual authorities. Setting out specific requirements for members' use of particular resources is not the Code of Conduct's intention nor proper domain.

4.4.7 Views on members' accountability for resources span a wide spectrum, reflected in the local resource protocols already adopted. Some resource protocols hold members strictly accountable. Others have adopted a more flexible approach, providing members and their families with some individual usage, particularly of IT resources, often with the caveat that members' personal use of authority equipment should not be for illegal or personal business purposes.

- 4.4.8 The majority of complaints received by The Standards Board for England to date alleging breach of paragraph 5(b) of the Code of Conduct have alleged inappropriate use of IT and electronic resources. This emphasis in cases to date probably reflects the contemporary prevalence of the use of computers, e-mail and the internet for professional and personal communications during staff time. Paragraph 5(b) currently refers to ‘resources’ generically. Should it be amended to draw a distinction between the use of physical and electronic resources and the use of staff time?
- 4.4.9 The Standards Board for England believes that, in this regard, paragraph 5(b)(i) should remain unchanged, and that resources should be similarly treated. This is because the paragraph is primarily about reflecting a principle; a further specific provision about discrete resources is properly the domain of authorities. In effect, paragraph 5(b)(i) is saying that a breach of the Code of Conduct occurs where there has been a breach of the authority’s own rules. The Standards Board for England is considering issuing a model protocol for resources.

Political purposes

- 4.4.10 In the interests of clarity and consistency across the legislative framework, The Standards Board for England believes there is a need for greater clarity of the relationship between the Code of Conduct, the restrictions under the *Local Government Act 1986* and the Code of Recommended Practice on Local Authority Publicity. The Standards Board for England believes that replacing paragraph 5(b)(ii) with a simple reference to the 1986 Act and Code of Recommended Practice would clarify and codify existing practice.
- 4.4.11 However, this would not address the issue of the misuse of resources other than physical material for political purposes. Whilst local protocols may address this issue, we believe the Government specifically wanted to address misuse for political purposes in the Code of Conduct. We therefore believe that paragraph 5 should address three issues as breaches:
- a breach of the 1986 Code of publicity;
 - a breach of any local protocol;
 - misuse of resources, in particular officer time, for inappropriate political purposes.

We welcome views on what sort of areas this last category should cover, and how it could be defined.

Questions

9 Do you agree that the Code of Conduct should address the three areas set out in 4.4.11 above?

10 If so, how could we define 'inappropriate political purposes'?

11 Do you agree that the Code should not distinguish between physical and electronic resources?

4.5 Duty to report breaches

Paragraph 7 of the Code of Conduct states:

A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority's Code of Conduct, make a written allegation to that effect to The Standards Board for England as soon as it is practicable for him to do so.

4.5.1 The Code of Conduct requires members who have a reasonable belief that a fellow member has breached the Code of Conduct to make a complaint to The Standards Board for England. Paragraph 7 was introduced to prevent members from turning a blind eye to misconduct and to provide protection to members who are whistleblowers.

4.5.2 The paragraph has resulted in complaints being made to The Standards Board for England which might otherwise not have been reported. However, The Standards Board for England has also received a number of complaints which it believes were politically motivated and malicious, rather than reflecting legitimate concerns about potential breaches of the Code of Conduct. It is not in members' interests to be subject to politically motivated, malicious and unfounded complaints, nor is it in the interests of the public and The Standards Board for England that resources are spent considering these allegations.

4.5.3 The Standards Board for England believes that the spirit behind paragraph 7 should be retained because it gives effect to the principles of openness and accountability and it works alongside other legislation designed to protect whistleblowers. It is in the wider public interest that people report misconduct and corruption when there are proper grounds for doing so. Whistleblowers play an important role in ensuring individuals and organisations are held accountable for their actions and, as such, the role of whistleblowers should be protected and championed. There is an argument that paragraph 7 should be dropped from the Code of Conduct because some members believe it places the onus on them to exercise vigilance over a wide scope of the activities of fellow members. However, The Standards Board for England believes that the spirit of paragraph 7 should be retained because of its role in serving the wider public interest.

4.5.4 It is still important to consider if the provision might be narrowed, to limit the opportunity for the section's misuse and to clarify its focus. Proposals made to The Standards Board for England by local government include:

- that the paragraph should be deleted altogether, relying instead on the integrity of members to report serious failures;
- that the paragraph should only apply to 'serious', 'significant' or 'material' failures to comply with the Code of Conduct;
- that the paragraph should only apply to misconduct by members in their public life;
- that members should first have a duty to report breaches of the paragraph to the monitoring officer or chair of the standards committee, who would decide whether the complaint was sufficiently serious or well-founded for it to be referred to The Standards Board for England,
- that a specific provision should be introduced making it a breach of the Code of Conduct to make false allegations.

Deletion of the paragraph

4.5.5 For the reasons outlined in 4.5.3 above, The Standards Board for England believes it is important that people report misconduct where there are proper grounds for doing so and that some protection is offered to those who wish to do so. Deleting the paragraph would not stop frivolous or malicious

complaints as members would still be able to report alleged breaches of the Code of Conduct.

Serious or significant failures and awareness

4.5.6 Narrowing the scope of misconduct addressed by paragraph 7 in terms of its 'seriousness' would address the current situation, where the paragraph is so widely drafted that members are under a strict duty to report all breaches of the Code of Conduct by every fellow authority member. This requirement, on the face of it, includes all potential breaches, even though complaints may already have been resolved locally, an apology has already been forthcoming, or the facts may not meet The Standards Board for England's threshold for investigation. However, settling criteria for 'seriousness' or 'significance' of the misconduct might involve a subjective judgement. The question of 'seriousness' might be addressed by the Code of Conduct's inclusion of a test, such as this:

A member must, if he or she becomes aware of any breach of the Code of Conduct by another member which he or she:

a reasonably believed to be serious or significant, or

b on the basis of the facts known to them at the time, should reasonably have concluded to be serious or significant;

make a written allegation to that effect to The Standards Board for England as soon as it is practicable for him or her to do so.

It has also been suggested that paragraph 7's use of the phrase 'becomes aware' does not adequately describe the degree of information required by a member about the potential breach of the Code of Conduct by a fellow member. It has been proposed that the alternate wording of 'knows or is informed' would further clarify paragraph 7.

Acts in public capacity

4.5.7 At present, paragraph 7 requires members to report all potential breaches of the Code of Conduct, including those arising from acts in a member's private life. This might be said to place an onerous and inappropriate duty on members to report a wide scope of potential breaches in their fellow

members' public and private lives. If the potential breaches which may be alleged under paragraph 7 were confined to members' misconduct in their official capacity, this may address the number of more minor matters received by The Standards Board for England regarding breach of paragraph 7. Limiting the scope of the breaches caught by paragraph 7 in this way would not prevent a member from making an allegation against another member for breach of the Code of Conduct in their private life under paragraph 4 (for disrepute), but would release members from the duty to report potential breaches arising from matters relating to a member's private life.

Reporting to the monitoring officer or standards committee

- 4.5.8 It is a clear view taken by both the Office of the Deputy Prime Minister and The Standards Board for England that there is a need for consistency of standards across the country which is guaranteed by referring all cases to an independent body for investigation. Filtering cases locally would not guarantee public confidence that national standards will be maintained. A system is already in place by which allegations of less serious breaches can be investigated and determined at a local level, but only at the discretion of the ethical standards officers, in order to maintain consistency of treatment.
- 4.5.9 In addition, there are practical reasons why such a provision would be difficult. Given the statutory framework in place for local referral and investigation of complaints, there may be conflicts of interest for monitoring officers who are advised of complaints which are later referred back to them for investigation. The same potential conflicts of interest would apply to standards committees, who are charged with hearing matters referred to them for local determination.
- 4.5.10 Additionally, there would be nothing to stop the same matter from being reported to the monitoring officer or standards committee chair and The Standards Board for England at the same time, by different parties, leading to a duplication of resources and potential prejudicing of the way in which the complaint is dealt with by The Standards Board for England and locally. The Standards Board for England therefore believes that initial referral of complaints under paragraph 7 to monitoring officers or standards committee chairs would not be helpful, and that a member's duty under paragraph 7 should remain a duty to report potential breaches to The Standards Board for England.

False and malicious allegations

- 4.5.11** It is not in the interests of members, the public or The Standards Board for England to spend resources on receiving and considering false and malicious allegations. The Standards Board for England does not wish to discourage the making of legitimate complaints, but it does wish to continue to discourage malicious or tit-for-tat complaints. In addition to the measures which The Standards Board for England has already taken to discourage malicious complaints, it is relevant to ask whether the Code of Conduct itself might address the issue.
- 4.5.12** Members might be deterred from making false and malicious allegations if it was a breach of the Code of Conduct to do so. Adding a further provision to the Code of Conduct would be a direct means of addressing abuse of paragraph 7, and one that might carry a significant sanction, but it would only impact upon those covered by the Code of Conduct — members. The further provision would not serve as a warning or corrective to members of the public against making false or politically motivated complaints. Unwittingly, the provision could also act as a deterrent for members making complaints where they do have legitimate concerns in case subsequent investigation of the complaint finds the member's concerns to be unfounded. It is important that genuine concerns about a serious breach of the Code of Conduct are dealt with. Such a provision could even have the perverse effect of encouraging more tit-for-tat allegations if it was abused by members.
- 4.5.13** On balance, The Standards Board for England believes that such a provision is not desirable. The Code of Conduct could, however, send a message about legitimate use of paragraph 7 to the wide audience of potential complainants if a warning and guidance about the use of paragraph 7 is included in the preamble to the Code of Conduct. *The Local Government Act 2000* places a duty on ethical standards officers to widen the scope of an investigation from matters alleged in the initial complaint to other matters encountered during the course of an investigation. Ethical standards officers have sometimes extended an investigation to encompass a case where a member is considered to have brought his or her authority into disrepute by knowingly making false allegations.

Protection of whistleblowers

4.5.14 It has also been suggested that there should be a specific provision in the Code of Conduct requiring members not to seek to intimidate or threaten complainants. This would make it clear that people have a right to protection when they blow the whistle, and would prevent members from making tit-for-tat allegations in revenge. The Standards Board for England believes that protection for whistleblowers is vital and that paragraph 7 and other legislation already provide comprehensive protection. In addition, there may be legitimate serious concerns about the complainant which need to be addressed. The Code of Conduct should not seek to prevent serious concerns being raised, and if a member does seek to intimidate a complainant, these matters can be dealt with through other provisions of the Code of Conduct, such as disrepute and disrespect.

Questions

- 12** Should paragraph 7 be retained in full, removed altogether or somehow narrowed?
- 13** If you believe the provision should be narrowed, how would you define it? For example, should it only apply to misconduct in a member's public capacity, or only to significant breaches of the Code?
- 14** Should there be a further provision about making false, malicious or politically-motivated allegations?
- 15** Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?

5

Registration and declaration issues

5.1 Personal interests

Paragraph 8.1 of the Code of Conduct states:

A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 [of the Code of Conduct] or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the wellbeing or financial position of himself, a relative or a friend or —

- a any employment or business carried on by such persons;*
- b any person 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 corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*
- d any body listed in sub-paragraphs (a) to (e) of paragraph 15 [of the Code of Conduct] in which such persons hold a position of general control or management.*

Paragraph 10(2) of the Code of Conduct states:

A member may regard himself as not having a prejudicial interest in a matter if that matter relates to —

- a another relevant authority of which he is a member;*
- b another public authority in which he holds a position of general control or management;*
- c a body to which he has been appointed or nominated by the authority as its representative;*
- d the housing functions of the authority where the member holds a tenancy or lease with the relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;*

- e *the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;*
- f *the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and*
- g *the functions of the authority in respect of an allowance or payment made under section 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.*

5.1.1 Paragraph 8 of the Code of Conduct requires members with a personal interest in a matter to disclose the existence and nature of that interest at the start of a meeting or when the interest becomes apparent. The existence of a personal interest does not of itself prevent a member from remaining in the meeting and voting. Members are not required to leave the meeting and refrain from voting unless their interest is also prejudicial. There are certain prejudicial interests which the Code of Conduct allows to be re-defined as personal in the circumstances set out in paragraph 10(2). A personal interest may arise not only from the business interests, employment and shareholdings of the member above a certain threshold, but also a matter's impact on their wellbeing and that of their relatives, friends and any employers.

The definition of 'friend'

- 5.1.2 The term 'friend' appears in paragraph 8 of the Code of Conduct. Paragraph 8 was drafted broadly, and though other terms used in paragraph 8, such as 'relative' and 'partner', are defined in the Code, 'friend' is not, so that its common-sense, everyday definition applies.
- 5.1.3 The Standards Board for England issued guidance on the definition of 'friend' in the *Case Review* number one (2003) as someone well known to another and regarded with liking, affection and loyalty by that person. Friendship implies a closer relationship than a mere acquaintance. Such friendship will be established by the actual relationship existing between two people. Mutual membership of an organisation (such as a lobby group, charity, political party

or even a political group on the authority) is unlikely to be sufficient on its own to establish the existence of a friendship between two people.” The Standards Board for England believes that it is not the role of legislation to define what friendship is or is not. This is the role of guidance. Defining friendship in legislation would likely lead to more, rather than less, contentiousness around the term.

Wellbeing

5.1.4 In using the term ‘wellbeing’, the drafters of the Code of Conduct presumably intended to make the declaration of interests broader than those which are purely financial. The requirement to consider wellbeing recognises that an individual’s quality of life is not reflected solely in financial terms. It has been suggested that wellbeing should be defined in the Code of Conduct. The Standards Board for England suggested a definition for wellbeing in the *Case Review* number one (2003) 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 wellbeing. It is not restricted to matters affecting a person’s financial position.” That guidance has been specifically endorsed by the High Court. For the similar reasons raised regarding the definition of friend, The Standards Board for England does not believe that it is necessary to define wellbeing in the Code of Conduct and believes it would be more appropriate to do so in guidance.

Inhabitants of an authority’s area

5.1.5 It undermines the integrity of the Code of Conduct when a member has to declare personal interests shared with a large number of people. The Standards Board for England believes that the Code of Conduct should include a new definition of personal interests. The Standards Board for England believes that the test in paragraph 8 of interests affecting ‘inhabitants of an authority’s area’ may be too broad and requires clarification.

5.1.6 Members must currently declare a personal interest if they would be affected by a matter in the authority's area to a greater extent than other council tax payers, rate payers or inhabitants of the authority's area. However, even on matters that affect everyone in the whole of the authority's area, members still need to consider all the relevant factors and whether they are affected to a greater extent than other inhabitants of the authority's area who have similar interests.

5.1.7 The present test unintentionally requires members to make a great number of declarations of personal interests. The phrase 'the authority's area' can be very broad, particularly in large rural areas with distinct communities. A matter that affects a large number of people may still be a personal interest if it does not affect the majority of people within the authority's area. The Standards Board for England believes that a narrower test should be used in paragraph 8 and that members should not be required to declare interests which are shared by a substantial number of other inhabitants in the authority's area.

Paragraph 10(2)(a–c)

5.1.8 The intention of paragraph 10(2) is to balance three principles:

- that members must withdraw from consideration of issues where their interests would prejudice the exercise of their public duties;
- that the rules on interests should not obstruct members who are involved in other forms of public service, such as another tier of local government;
- that the rules on interests are not intended to interfere with the proper conduct of council business.

5.1.9 Paragraph 10(2) deals with situations where members have interests arising from their public office or from service on other authorities and public bodies, where rules in relation to prejudicial interests might interfere with the proper conduct of authority business. It is common, however, particularly in smaller communities, for members to be involved with other community bodies, either as a representative of the authority or in their own right. Currently, membership of one of the public bodies listed in sub-paragraphs (a–c) of paragraph 10(2) automatically gives rise to a personal interest. Members are also required to consider if that interest is prejudicial.

- 5.1.10 The prevalence of member involvements and appointments to public bodies is such that The Standards Board for England believes the current requirements of the Code of Conduct may place an onerous and ongoing responsibility on members to declare their membership of other public bodies. Many interests that arise from service on other public bodies will not be significant. The Standards Board for England believes that there should be no objection, in principle, to an individual serving on a number of public bodies, and the fact that an issue being considered by one body may involve another body with which the member is concerned will not necessarily indicate that the member's judgment of the public interest will be prejudiced.
- 5.1.11 Although paragraph 10(2)(a–c) was drafted with the laudable intention of assisting members who serve on more than one body, The Standards Board for England considers that it has not achieved that aim. It has been widely misconstrued as giving members an absolute exemption from the rules on prejudicial interests, a position that The Standards Board for England considers to be untenable. At the same time, the Code of Conduct provides no guidance on when it could be appropriate to rely on 10(2)(a–c). This has led to widespread confusion and anxiety.
- 5.1.12 The Standards Board for England believes that a new approach is required for members who serve on other public bodies. In order to avoid the necessity of mass declarations, we suggest that a new category of 'public service interest' be created, which would be subject to the prejudicial interest test. Where a public service interest was not prejudicial, there would be no need to declare it at the meeting, provided that it was properly recorded in the member's register of interests. Where a public service interest was prejudicial, it would need to be declared and the member concerned would not be able to vote on the issue under discussion. However, members with prejudicial public service interests would be able to remain in the room and participate in debate, but withdraw before any vote was actually taken. Paragraph 10(2)(a–c) would be removed from the Code of Conduct.

Paragraph 10(2)(d–g)

5.1.13 The provisions of sub-paragraphs 10(2)(d–g) apply to a specific set of situations that commonly arise during authority business, such as setting allowances for members of the authority. On the face of it, members have a prejudicial interest in matters affecting their own allowances, for example. Members are best placed to make such decisions regarding their peers, however, so to avoid the need to apply for dispensations to vote, the Code of Conduct sets out the situations where members do not have prejudicial interests in sub-paragraphs 10(2)(d–g). The Standards Board for England believes that sub-paragraphs 10(2)(d–g) should be broadly retained, although some minor amendments may be needed — for example, to include the issue of indemnities and appointments to specific positions.

Membership of public bodies, charities and lobby groups

5.1.14 Personal interests under the Code of Conduct can arise in many different ways. A matter can affect the member personally or affect one of the member's relatives or friends. We have already referred in this section to interests which arise through public service. There is a third category of interests which covers membership of charities and lobby groups. The second two categories are, in our view, quite different to the first category, because they could give rise to interests even where the matter under discussion does not have a direct impact on the member or their family and friends. Membership of a charity or lobby group may simply reflect the member's strongly held views on a particular issue.

5.1.15 The Standards Board for England believes that the Code of Conduct does not currently distinguish sufficiently between the different types of personal interest that can arise. The Standards Board for England proposes that public service interests and interests arising from membership of charities and lobby groups should only be prejudicial in the following situations:

- where the matter has a direct impact on the body concerned (for example, a grant of money);
- where the member is involved in regulatory matters in a decision-making capacity (for example, planning and licensing), where it is generally accepted that particularly high standards of probity and transparency are required.

5.1.16 The Standards Board for England also considers that in relation to prejudicial interests arising from membership of charities and lobby groups, members should be able to remain in the room and participate in debate but withdraw before any vote is taken (the same rules that would apply to public service interests under the proposal in paragraph 5.1.12 above).

Questions

16 Do you think the term ‘friend’ requires further definition in the Code of Conduct?

17 Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority’s area?

18 Should a new category of ‘public service interests’ be created which is subject to different rules of conduct?

19 If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings?

20 Do you think paragraph 10(2)(a–c) should be removed from the Code of Conduct?

21 Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

5.2 Prejudicial interests: a councillor’s right to make representations

Paragraph 10.1 of the Code of Conduct states:

...a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a reasonable member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest.

- 5.2.1 The Standards Board for England's interpretation of this requirement is that a member needs to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation and, in particular, how the circumstances are likely to impact on the member's judgement of the public interest. The judgement must be a reasonable one, and an interest will only be prejudicial if it can be regarded as significant. The judgement should be applied objectively. The question is not whether the member considers her or himself to be prejudiced, but whether a reasonable member of the public, knowing the facts, would think so.
- 5.2.2 For an interest to be prejudicial, it must be 'likely to prejudice' the member's judgement. 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 with the local community, will not normally be sufficient to meet the test. There must be some factor that will harm the member's ability to judge the public interest objectively. Members who have a prejudicial interest in a matter to be discussed must declare the nature and existence of the interest, leave the room, and not be involved in, or seek to influence improperly, the decision.

The Richardson question

- 5.2.3 Members may be voted to office because of their personal and professional experience and their commitment to campaigning for particular issues. A member's membership of lobby and campaign groups should be included in the register of interests. The Code of Conduct requires members to declare a personal interest in any matter relating to interests included in the member's register of interests. A member should declare the existence and nature of their interest at the meeting, so that members of the public are aware of interests that may relate to the member's decisions. The member can continue to participate in the meeting unless the interest is also prejudicial. The Standards Board for England recently issued guidance for members involved in campaign and lobby groups in its publication, *Lobby groups, dual-hatted member and the Code of Conduct* (September 2004).

- 5.2.4 It is perceived that the Code of Conduct unnecessarily limits the quality of information and advice available to a voting body when it prevents members with prejudicial interests from addressing the meeting. Some would argue that, although a member's prejudicial interests should prevent them from involvement in decision-making, they need not prevent the member contributing to debate.
- 5.2.5 When considered by the Court of Appeal, the case of *R. (on the application of Richardson) v North Yorkshire CC [2003] EWCA Civ 1860* raised two general questions on the issue of prejudicial interests and involvement in council decision-making:
- Does the requirement under paragraph 12(1) of the Code of Conduct, that a member with a prejudicial interest withdraw from a meeting, apply to all members of the authority, or only to those who are members of the committee holding the relevant meeting?
 - Is a member with a prejudicial interest entitled to attend a meeting in his or her personal capacity?
- 5.2.6 On the first question, the Court of Appeal agreed with the original ruling of Mr Justice Richards that the ordinary and natural meaning of the words used in the Code of Conduct meant that the requirement to withdraw applied to all members of an authority. On the second question, the Court of Appeal held that a member of the authority attending a council meeting cannot, simply by declaring that they are attending in a personal capacity, divest themselves of their official role as a councillor. The member is still to be regarded as conducting the business of their office, and only by resigning can a member shed this role.
- 5.2.7 This consultation is a further opportunity to consider whether a member with a prejudicial interest should, nevertheless, be able to attend and address a meeting as long as they do not take part in the decision-making. There is the argument that members should have the same right to make representations as members of the public. However, the Code of Conduct was drafted to give effect to the principle that members undoubtedly have, or are perceived to have, a greater influence than ordinary members of the public.

- 5.2.8** Paragraph 10 of the Code of Conduct attempts to protect parity and transparency by preventing members from using their position to exert influence over decision-making. The Standards Board for England believes that all councillors have influence by virtue of their role, and this influence may still be brought to bear upon decisions even if the member addresses the meeting in their personal capacity or were to remain in the meeting during the vote. Whilst it is quite right that members influence decisions, the Code of Conduct seeks to ensure that the influence is not improper. The pervasive effect of a member's influence is such that if a member has a prejudicial interest they should not participate in the meeting.
- 5.2.9** There are avenues available to members to present their constituent's views, apart from personally addressing a meeting. The Standards Board for England's view is that it is permissible for a member who cannot address a meeting due to their prejudicial interests to ask another member without a prejudicial interest to present their constituents' views. In the light of the Court of Appeal decision in the Richardson case, The Standards Board for England believes that the Code of Conduct's intention is to protect the decision-making process from influence and that there are sufficient avenues available for members to communicate their constituents' views to meetings.
- 5.2.10** A less stringent approach is proposed for members with prejudicial interests arising from public service or membership of charities and lobby groups, set out in paragraphs 5.1.12–5.1.16.

Questions

22 Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

23 Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

5.3 Registration of interests

Paragraph 14 of the Code of Conduct states:

...a member must register his financial interests in the authority's register...of —

- a any employment or business carried on by him;*
- b the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;*
- c the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties...*

Paragraph 15 of the Code of Conduct states:

Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office...a member must register his other interests in the authority's register maintained under section 81 (1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any —

- a body to which he has been appointed or nominated by the authority as its representative;*
- b public authority or body exercising functions of a public nature;*
- c company, industrial and provident society, charity, or body directed to charitable purposes;*
- d body whose principal purposes include the influence of public opinion or policy; and*
- e trade union or professional association.*

Sensitive information

- 5.3.1** Sub-paragraphs 14(a) and (b) of the Code of Conduct require members to include in the register of members' interests information about their employment and employer, including their personal and business address details. Issues around public access to this information have arisen where members are employed in areas of sensitive employment, such as certain scientific research and the special forces. Public access to information about members' employment may, given the security issues surrounding these areas of work, threaten the safety of the member and their family.
- 5.3.2** The Standards Board for England believes that, in order to afford members appropriate personal protection, an extra provision should be included in the Code of Conduct providing members a dispensation from publicly registering sensitive information about their employment. In order to take advantage of the dispensation, members would be required to satisfy their authority's monitoring officer that they are engaged in sensitive employment. Under the dispensation, members would not be required to publicly register sensitive information about their employment. Rather, this information would be provided to the monitoring officer and would not be available to the public. The provision should reflect practice relating to company directors.
- 5.3.3** Since the Code of Conduct's implementation, The Standards Board for England has, in the interest of members' safety, not referred for investigation references about members who have not entered their employment details in the register because of sensitive employment issues. These members have, on the advice of The Standards Board for England, provided this information in confidence to monitoring officers. It is timely for this issue to be dealt with in formal review and amendment of the Code of Conduct. This is a significant issue concerning members' employment and safety and monitoring officers require clarification of their responsibilities.

Membership of private clubs and organisations

- 5.3.4** Paragraph 15 of the Code of Conduct requires members to register their interests in the authority's register within 28 days of election or appointment to office, including membership of organisations set out in sub-paragraphs (c–d). The Code of Conduct's intention is that the decision-making processes

of local government should be transparent and that the public and fellow members are entitled to information which may indicate the organisations, affiliations and interests that may influence a member's decision-making.

- 5.3.5** Many members feel that there is a lack of clarity in the Code of Conduct around the nature and scope of the organisational memberships that must be registered. In some cases, members have felt it necessary to exercise caution and register all memberships to ensure full compliance with the Code of Conduct's registration requirements.
- 5.3.6** The information required of members to be registered under the Code of Conduct must be examined with regard to its relevance, utility and proximity to the authority.
- 5.3.7** Since the Code of Conduct's implementation, the question of whether the Code of Conduct should require members to register membership of specific private members' clubs has been widely debated. There are perceptions, among members and the public, that relationships and interests fostered by and between members through members' clubs can present a significant body of influence in local government decision-making. The Standards Board for England's guidance is that paragraph 15(c) of the Code of Conduct may, in certain circumstances, require these interests to be registered. However, paragraph 15(c) has been open to differing interpretations and The Standards Board for England believes that, for the sake of clarity, there should be an explicit requirement to register membership of private clubs and organisations, but only those within or near the authority's area.

Questions

- 24** Should members employed in areas of sensitive employment need to declare their occupation in the public register of interests?
- 25** Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area?

5.4 Gifts and hospitality

Paragraph 17 of the Code of Conduct states:

A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

- 5.4.1 A member has to declare only those gifts or hospitality received in his or her capacity as a member. A member should register all gifts and hospitality if they could reasonably be viewed as relating to a member's official duties, but it is clear from the drafting and intention of the Code of Conduct that gifts received privately, and unrelated to council business, need not be registered. However, members should bear in mind that some gifts received privately might give rise to suspicions in the mind of the public that the member may seek to promote the interests of the donor.
- 5.4.2 It has been suggested that 'hospitality' should be defined by the Code of Conduct, but The Standards Board for England believes to do so would be overly prescriptive. It believes instead that the term should be given its everyday meaning, referring to food, drink, accommodation and entertainment. As with declaring gifts received, members should apply common sense when they consider how receipt of hospitality will, or could be, interpreted, and bear in mind the underlying principle.
- 5.4.3 Paragraph 17 was introduced to give practical application to the principles of openness and accountability. To further the Code of Conduct's endorsement of these principles, The Standards Board for England believes that the Code of Conduct should require the register of gifts and hospitality to be publicly available as part of the register of interests under section 81 of the *Local Government Act 2000*.
- 5.4.4 A number of authorities have included in their local codes the following provisions which The Standards Board for England believes should be included in the Code of Conduct:
- members should be required to register gifts and hospitality offered but not accepted;
 - members should be required to register series of gifts received from the same source which, valued together, would meet the threshold limit.

- 5.4.5** Paragraph 17 was introduced to give practical application to the principles of openness and accountability. Members should not benefit personally from their appointments, nor should their impartiality be compromised, or be perceived to have been, by receiving gifts or benefits.
- 5.4.6** The Code of Conduct's intention is that members also declare the source of gifts they receive. Without such information, the register would be of very little use. The requirement to declare gifts and hospitality offered but not accepted will more comprehensively record the potential sources of influence to members of an authority. Where gifts come from the same source over a period of time, and the cumulative value of the gifts is over £25, The Standards Board for England believes that these gifts ought to be registered. This provision should recognise that benefits may come to members in more forms than simply one-off gifts.
- 5.4.7** It is important that the reporting requirements of the Code of Conduct be relevant. When the Code of Conduct was introduced in 2002, the threshold value of gifts and hospitality required to be declared was set at £25. Given the passage of time since the Code of Conduct's introduction, The Standards Board for England believes that the consultation exercise should review whether the £25 limit is still appropriate. The Standards Board for England does not believe that the limit needs to be adjusted but welcomes other views.

Questions

- 26** Should the Code require that the register of gifts and hospitality be made publicly available?
- 27** Should members also need to declare offers of gifts and hospitality that are declined?
- 28** Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this?
- 29** Is £25 an appropriate threshold for the declaration of gifts and hospitality?

6

Consultation criteria

- 6.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultation documents in electronic and printed form. They will often be relevant to other sorts of consultation.
- 6.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements, such as under European Community Law, they should otherwise generally be regarded as binding for UK departments and their agencies, unless ministers conclude that exceptional circumstances require a departure.
- 1 Consult widely through the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
 - 2 Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - 3 Ensure that your consultation is clear, concise and widely accessible.
 - 4 Give feedback regarding the responses received and how the consultation process influenced the policy.
 - 5 Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
 - 6 Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- 6.3 The full consultation Code of Conduct may be viewed at:
www.legislation.hmso.gov.uk/si/si2001/20013575.htm
- 6.4 Are you satisfied that this consultation has followed these criteria?
If not, or you have any other observations about ways of improving the consultation process, please contact 0845 078 8181 or e-mail **enquiries@standardsboard.co.uk**.



This paper includes at least 75% recycled material. The remainder comes from forests managed using sustainable development practices.