The Government's response:

The Government welcomes the Committee's support for the introduction of these regulations.

The Committee proposed:

8. **We recommend that members against whom a complaint has been made be informed of the complaint by the Standards Board as soon as it is received and that the relevant monitoring officer be made aware of the complaint at the same time.**

The Government's response:

The Government does not accept this recommendation. The Board's current approach is to concentrate its resources on making speedy initial decisions on whether or not to refer cases for investigation. The Board currently rejects some 75% of allegations received and aims to make decisions and inform the parties concerned, including the member accused, within 10 days of receipt of the complaint. We are discussing with the Standards Board the practicalities of ensuring this information is brought to the attention of those concerned as soon as practicable.

The Committee proposed:

9. **We do not support the proposal that the names of the complainants should be made public.**

The Government's response:

The Government accepts the Committee's recommendation, and considers that naming complainants publicly on a website could act as a disincentive to people with legitimate complaints from coming forward with their allegations.

The Committee proposed:

10. **We welcome the Standards Board's commitment to review practice on the publication of case details on its website during 2005 and recommend a reduction in the duration of time for which the names of those exonerated remain on the Standards Board's website.**

The Government's response:

The Government appreciates the Committee's concern about the potential effect of publicity about cases arising from the naming of members subject to allegations on the Board's website, specially in the case of members who are found not to have breached the code. However, many members who have been found not to have breached the code may equally wish this information to be made public. The Board has reviewed its policy on the publication of information on cases on its website in the light of the Committee's concerns,

and has amended its practice on the publication of case details. Its current policy is for summary information on cases where members have been found not to have breached the code of conduct to be removed from the website after six months (rather than after two years for other cases). The Board believes this strikes a balance between exonerating the member in public and ensuring that his name does not remain in the public eye for too long.

The Committee proposed:

11. We support the recommendation of the Committee on Standards in Public Life that all parish councils remain within the ambit of the ethical framework for local government.

The Government's response:

The Government accepts that parish councillors should continue to be subject to the conduct regime for local government, reflecting the importance of the role of parish councils in the local government world.

The Committee proposed:

12. We strongly condemn the activities of those who knowingly make vexatious, malicious or frivolous complaints.

The Government's response:

The Government welcomes the Committee's condemnation of those who make vexatious or trivial complaints. The Board will continue to respond publicly and robustly in the case of such complaints, so as to give the clear message that vexatious and trivial complaints will not be investigated and will be rejected straightaway, and so that any inclination to make unfounded complaints will be discouraged. However, other people and bodies, such as members, local authorities and political parties, have vital roles in reducing the incidence of vexatious complaints. Local authorities, in taking ownership of conduct issues, need to understand that the making of vexatious complaints can have a corrosive effect on the way councils are perceived by the public, so it does not benefit anyone in the long term.

The Committee proposed:

13. We do not believe that that the imposition of penalties on those making malicious complaints would be beneficial in the long term. The additional burden it would impose on the Standards Board and its Ethical Standards Officers could not be justified and we are conscious that taking such an approach may act as a disincentive to those with legitimate complaints to raise.

The Government's response:

The Government agrees with the Committee's view that the imposition of penalties on people making malicious complaints would not be beneficial to

the overall regime, given the disincentive effect it would be likely to have on those with legitimate complaints from coming forward with their allegations.

Promotion, Guidance and Training

The Committee proposed:

14. The Standards Board acknowledged a growing demand for its training and guidance materials. We welcome the Standards Board's assurances that further resources would be deployed to respond to this demand and recommend that in doing so that it pay particular attention to producing advice and guidance in a timely and accessible fashion.

The Government's response:

The Government appreciates the Committee's recognition of the increasing importance of the provision of guidance and training materials by the Board The Board will deploy increasing resources into the provision of guidance and training, so as to meet the growing demand for support. The importance of this will be underlined as a result of our intention to give standards committees powers to make initial assessments of allegations, which will mean that local authorities will need to be provided with support and guidance for their new role in advance of the new provisions coming into effect.

The Committee proposed:

15. We advocate an approach whereby training on the Code of Conduct and ethical governance for newly elected members becomes embedded within the culture of local government organisations.

The Government's response:

The Government appreciates the stress the Committee places on the importance of the provision of training on the code of conduct as an intrinsic part of local government culture. It is the responsibility of local authorities to ensure that officers who are investigating cases and members who are making determinations on them understand what is expected of them. The Board will increase the effort it is devoting to improving the presence of training provision as a central part of the local government world. As part of its wider remit, the Board will work to ensure that it is able to assess the effectiveness of training in improving local cultures

The Committee proposed:

16. We recommend that the Standards Board include monitoring levels of attendance for training as part of its annual programme of research and the Audit Commission take account of attendance levels as part of the Comprehensive Performance Assessment.

The Government's response:

The Government appreciates the importance the Committee places on the role of ethical issues within the Comprehensive Performance Assessment process. The Board will consider conduct issues arising from the management of the CPA process with the Audit Commission, including any possible assessment of the take-up of training, as appropriate. The Board will seek to measure the impact which training is having, alongside CPA and the ethical governance toolkit, in embedding conduct issues at the centre of the local government world

The Committee proposed:

17. We recommend that the Board concentrate further resources on communications with and promotion of compliance with the Code of Conduct to parish councils. In this regard we welcome the Board's undertaking to consider delivering training directly at a local level and would urge it to do so quickly.

The Government's response:

We appreciate the Committee's concern about the need to support parish councils in the management of their role regarding the code of conduct Although the Board is not in a position to deliver training themselves at local level, given the sheer number of parishes and the Board's limited resources, it is seeking ways of building capacity to promote high ethical standards in parish councils, and to assist the local delivery of training and support for parishes, particularly through supporting the work of county associations and attending regional training events for parishes.

The Code of Conduct

The Committee proposed:

18. We recommend that the general principles of standards of conduct in public life, as set out in the Relevant Authorities (General Principles) Order 2001, should be incorporated into the Code of Conduct as this would provide greater context for the Code itself and assist in interpretation.

The Government's response:

The Government accepts that there would be benefits in incorporating the ten general principles of public life into the code of conduct, or as an annex or preamble to it, since these principles provide extra context for understanding the code. Following its review of the code of conduct, the Standards Board has proposed the inclusion of the principles as a preamble to the code. We intend to make amendments to allow for the principles to be published alongside the code.

The Committee proposed:

19. We agree with the Committee on Standards in Public Life in their statement that "the principle that the Code should support an organisational culture that encourages the reporting of wrong-doing by others is at the heart of ensuring high standards in public life".

The Government's response:

The Government appreciates the Committee's view that the code should support the reporting of wrong-doing by members. However, we also consider there is a need, as the Committee has also accepted, to reduce the incidences of vexatious or trivial complaints. Following its review of the code, the Standards Board has proposed that the requirement in the code to report to the Board any breach of the code by others should be deleted. They take this view because of the encouragement some members feel this provision gives to the reporting of trivial or vexatious complaints. We intend to accept this proposal.

However, in order to support the encouragement of a culture where members feel able to report cases where they have serious and genuine allegations to make, we also agree with, and will implement, the Board's proposal for a specific provision making it a breach of the code to seek to intimidate a complainant or a witness. We believe that this will provide appropriate protection to encourage the reporting of serious allegations of misconduct.

The Committee proposed:

20. There should be scope within Clause 7 of the Code of Conduct for members to exercise judgement in distinguishing between rumours and well-founded suspicions. The Code, and any guidance produced on interpretation, should reflect this.

The Government's response:

The Government appreciates the Committee's concern that where allegations are put to the Board they are well-founded, and not based on rumour. As indicated in our response to the Committee's 19th recommendation, we have concluded that the requirement for members to report to the Board any breach of the code by other members should be deleted, in response to the concern by some that this provision gives encouragement to the reporting of trivial or vexatious complaints.

Support for members who do wish to make well-founded complaints will be provided by making it a breach of the code to seek to intimidate a complainant or a witness.

The Committee proposed:

21. We do not support the proposal that knowingly raising false allegations should be a specific breach of the Code of Conduct.

The Government's response:

The Government agrees with the Committee's view that a specific provision should not be added to the code to provide that raising false allegations should be a breach of the code, given the effect such a measure would be likely to have in discouraging members from bringing forward substantive allegations.

The Committee proposed:

22. We recommend that Clause 7 be amended to reduce its scope to include only complaints arising from members' activities in public life.

The Government's response:

The Government believes the councillors should set an example of leadership to their communities, and that they should be expected to act lawfully even when they are not acting in their role as members. We do not agree therefore that the code should be amended to refer only to complaints arising from members' activities in public life. Following its review of the code, the Standards Board has, however, recommended that the current rule should be amended to provide that only certain behaviour outside official duties should continue to be regulated, but that this should be restricted only to matters that would be regarded as lawful. We accept this proposal, since it would balance the need for members to continue to set an example to their communities, and the need to exclude from proscription actions outside of official duties of which certain people might merely disapprove.

ANNEX C

THE STANDARDS BOARD'S RECOMMENDATIONS FOR CHANGES TO THE CODE OF CONDUCT FOR MEMBERS

Introduction

1. The Standards Board for England has been in existence for nearly five years and in that time has developed a wealth of experience in handling cases and interpreting the model Code of Conduct for Councillors. To that end, the Board was invited by Government to review the Code as part of the Government's consideration of the further development of the ethical framework for local government.

2. The Board believes that the proposals set out in this document will ensure that the Code becomes better focussed on important and serious issues of misconduct which need to be addressed to raise public confidence in local government; and will help to reduce further the number of minor, vexatious and frivolous complaints which have arisen in the past.

3. The Board therefore urges Government to adopt these proposals quickly, as representing a consensus of views both from the regulators at national and local level and the regulated community.

4. The recommended changes will work together with the strategic shift already made by the Board towards a greater emphasis on local case handling. Increasingly only the most serious cases will be investigated nationally. The Board has also placed a greater emphasis on support, advice and guidance for councillors and their advisers. These initiatives – together with progress already made in embedding the ethical regime in local government and in raising standards – will be enhanced, thereby increasing public confidence that misconduct is being dealt with and that councillors are acting in the best interests of the communities they represent.

5. In reviewing the Code, the Board carried out an extensive consultation with all key stakeholders between February and June 2005. The Board received over 1200 responses. An independent analysis of the responses was carried out on the Board's behalf by researchers from the University of Teesside.

6. Accompanying the consultation, the Board also hosted 11 regional roadshows to discuss the Code with standards committee members and monitoring officers and conducted face-to-face meetings with representatives of all the key national organisations. In carrying out its review, the Board has also considered the reports of both the Committee on Standards in Public Life and the Parliamentary Committee on the Office of the Deputy Prime Minister. Above all the Board has also drawn on its experience as the regulatory body charged with working with and overseeing the Code since May 2002.

7. In carrying out this review the Board has had a number of key principles at the forefront of its mind, foremost of which is the Code's purpose in setting standards which the public have a right to expect from their democratically-elected representatives. The Board also wanted to ensure that the Code, while fulfilling the primary role of increasing public confidence in local democracy, supports councillors in doing the job for which they have been elected to the best of their abilities and in line with the ten general principles.

8. In reaching its conclusions on proposed modifications, the Board's overriding aim is to consider how provisions can be simplified, clarified or, in certain cases, liberalised while remaining true to the principles underpinning the Code.

9 A key theme of the consultation was the need for a consistent application of the rules across the country and for clear advice so that all members can understand their duties under the Code. While simplification of the Code will go some way to achieve this, it is not the only way in which consistency can be achieved. The Board is therefore committed to continue to work in partnership with national bodies and with local standards committees and monitoring officers to ensure there is clear, consistent and unambiguous advice and guidance to help councillors do their jobs more effectively.

10. This is in line with the Board's developing role as a body which will deal only with the more serious cases and which will spend more of its resources on advice, guidance and support in line with Ministerial priorities.

11 The following report sets out the Board's recommendations on how the Code should be amended to improve its effectiveness. It sets out the questions raised in the Board's consultation and the Board's recommendations, supported by reference to the independent analysis of consultation responses and case examples drawn from its own experience

Executive summary/General conclusions

- The headline recommendations from the consultation are as follow:
- The Code should be clearer, simpler and more positive.
- How the Code is enforced, nationally and locally, is as important as its content.
- The ten general principles set out in the *Relevant Authorities (General Principles) Order 2001* should be a preamble to the Code setting out the standards to be attained by members
- The regime for declaring interests should be urgently addressed
- The duty to report potential misconduct should be removed.
- The Code should be clearer in ensuring that, where private conduct is regulated, it should only be for unlawful activities.
- The Code should include a new provision to address bullying.
- The public interest defence should be explicitly included in the Code and its provisions on confidential information reconsidered and clarified in the light of the Freedom of Information Act.

Introduction

12 The Board recommends that the Government seeks ways to simplify and clarify the Code wherever possible. There is particular need to clarify and reframe the rules around declarations of interests and to ensure that the Code is seen in a more positive light as promoting effective local governance rather than merely being a list of prohibitions on certain activities. The Board believes the Code should, where possible, be written as a positive rather than negative statement.

13. Specifically, and as will be further explained with reference to the consultation analysis, the Board recommends that the Government should include the ten general principles as a preamble to the Code. This would remind members of the positive values they should be promoting and the purpose behind having a Code

Declarations of interests

14. The Board's key finding is that the regime for declaring interests needs to be addressed urgently. It is clear from consultation that councillors have too often felt excluded from discussing issues where they have a legitimate interest and where the public would expect them to be representing the views of their communities. Many of the cases cited have arisen more as a result of poor advice received locally, inconsistent interpretation of the rules across the country or because of the need (unrelated to the Code of Conduct) to protect public decision-making from bias or predetermination. However, it is clear that the very broad and general provisions of the Code itself do not lend themselves in their present form to consistent interpretation and too often can be seen to lead to too many declarations of interest.

15 The Board believes that the public has a right to expect decisions to be made for the public good and not simply to serve a vested interest. However, it believes the Code needs to be rebalanced so that it properly excludes councillors from taking decisions where they or their close associates gain an unfair advantage but that it allows councillors to participate where they are acting in their representative or local advocacy role and that its proposals will achieve that balance.

Whistleblowing

16 The Board's other key concern is how the Code can be amended to minimise further the potential for politically-motivated trivial complaints. Whilst the Board has already made great strides in this direction and believes that the message that it will not entertain such complaints is now well understood, nevertheless the Board proposes that, as a further strategy to address this issue, the current duty on members to report all breaches of the Code to the Board is removed from the Code. The Board believes that the existing provision has not achieved the aim of protecting members who make serious allegations against their colleagues from being subject to intimidation in certain cases nor does the Board believe that the duty has meant that serious misconduct which otherwise would have gone unreported has been brought to its attention as a result of this provision.

17. The Board believes, however, that a specific provision making it an offence to seek to intimidate a complainant or a witness would give the protection originally sought by the provision and allow members to come forward where they have serious concerns.

Disrepute and private conduct

18. The Board also recommend that certain aspects of a member's private life should continue to be viewed as capable of bringing the authority into disrepute. The Committee on Standards in Public Life recommended that this provision was restricted solely to public life but this view was not supported in consultation. The Board believes that there are certain unlawful activities which, although not carried out on official duty, would nevertheless damage the public's perception of that member's fitness for office. The Board accepts that members are entitled to a private life but recommends that unlawful activities continue to be within its jurisdiction, a view overwhelmingly supported in consultation. This would also be in line with the General Principles which state that a councillor should uphold the law.

Confidential Information

19. We are also recommending that a greater balance needs to be struck between the proper need for an authority to protect confidential information and the member's right to make information available in the public interest, particularly in the light of the Freedom of Information Act. The Code needs to be clearer that there will be times when it is legitimate to raise concerns and release information which has been deemed confidential. We believe that there should be a presumption in local government towards openness in order to ensure proper public accountability and that the Code should therefore reflect this presumption.

Bullying

20. We also believe that a specific provision to address the rare but serious incidents of bullying is necessary. Whilst the Code already says that members should treat people with respect and the Board has been successful in dealing with cases of bullying, we believe that such cases have been particularly concerning for the types of characteristics they have demonstrated and that the Code could make a much clearer statement that such behaviour cannot be tolerated in a modern workplace. Whilst councillors have a right to challenge and question advice and decisions, certain cases have shown the line to have been crossed between appropriate challenge and intimidation and humiliation. Such behaviour should not be tolerated and we are committed to working with all in local government to stamp it out.

The General Principles

Questions

Q1. Should the ten general principles be incorporated as a preamble to the Code of Conduct?

Q2. Are there any other principles which should be included in the Code of Conduct?

Consultation response

21. Question 1 elicited one of the strongest positive responses of the consultation, 95% of respondents supporting incorporation of the general principles as a preamble to the Code. While less than 5% of respondents disagreed with the proposal, a degree of caution was expressed across the responses that too heavy reliance not be placed on the principles themselves. One respondent expressed this as:

"Whilst it would be valuable to annex the Principles to the Code in order to set the context for the Code and as an aid to interpretation, it is fundamentally important that the Principles do not form part of the Code itself... The general principles are precisely that – general principles – and they are completely unsuited for use as part of a code itself... The general principles are so general and subjective that they cannot form the basis of a charge." (Peter Keith-Lucas)

22. In response to Question 2, 51% of all respondents expressly stated that they did not wish to add any further principles to the ten principles now generally referred to as "The Nolan Principles". A few responses suggested additional principles, though none of the additional principles was offered by more than one response.

Recommendations

- **The Board proposes that the ten general principles be included as a preamble to the Code. The general principles are set out in Annex 1 to this document.**

23. Inclusion of the general principles as a preamble to the Code will see further integration of the principles into public life, as recommended by The Committee on Standards in Public Life. However, whilst the Board believes that the general principles should be included in the Code, this would clearly be in the light of the current consultation on the seven principles of public life being conducted by the Committee on Standards in Public Life.

24. 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, to date, has not expressly incorporated the general principles. Their inclusion will serve to define aspirational standards and to remind members of the purpose of the Code and the values which they are meant to uphold as democratically elected representatives. The general principles underpin and steer the Code. Their inclusion will represent a more coherent linking of aspirational and practical standards and will further clarify the Code. The principles will function as integral reference points, each of the Code's provisions being directly referable to one or more of the general principles.

25. The principles' inclusion will contextualise and may assist in interpreting the intention behind the rules in individual circumstances. It is the Board's view and experience to date, as reflected in its *Case Review* publication (Nos 1, 2 and 3), that the general principles are fundamental to the Code's interpretation, which has been reflected in the increasing extent to which decisions of The Adjudication Panel for England refer to both the Code and to the general principles when determining Code breach.

26. However, given that many of the principles, such as the requirement to act selflessly, are subjective, the Board wishes to stress that it does not propose that the general principles become embedded as enforceable provisions of the Code. Nor, on the basis of the consultation response to Question 2, does the Board recommend that the general principles are augmented by any additional principles.

27. The equivalent Scottish code includes key principles which are similar to the general principles and, following from the recent consultation of the Welsh Ombudsman, the general principles are being incorporated as a preamble to the revised Welsh Code. The inclusion of the general principles in similar codes signals a movement favouring their inclusion in the interests of clarity and consistency and a means of inculcating the correct standards.

Behavioural issues

Disrespect and freedom of speech

Questions

Q3. Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

Consultation response

28 The Code of Conduct's current broad test was supported by 76% of respondents, many voicing the view that a narrower test would be less effective. Respondents expressed the following views:

"Limiting the definition could lead to greater inflexibility." (Watford Borough Council).

"'Disrespect' may be regarded as a subjective concept. What might be acceptable between experienced Members in the heat of debate might not, in tone or content, be appropriate in a conversation between a member and a member of the public, or a junior officer. A broad test should enable the Standards Board, Adjudication Panel, Standards Committee, or an Ethical Standards Officer to reach a conclusion as to whether, in particular circumstances, conduct or treatment has been 'disrespectful'." (Greater Manchester Police Authority).

"We see the problem about the concept of respect and whether there should be a definition. We can also see that some people because of their cultural background or for other reasons may apply higher standards than the population generally. Any definition could reasonably only refer to a minimum standard and that would be a pity" (The Commissioner for Local Administration in England).

29 A small number of respondents suggested that the section should be deleted and approximately a quarter (24%) of respondents sought a more defined statement for disrespect. However analysis of the responses strongly suggests that the Code retain its current broad definition of disrespect.

Recommendations

- **The Government needs to address the issue of paragraph 2(a) and consider whether it can be made enforceable or whether it should be deleted and rather than the Code dealing explicitly only with unlawful discrimination, all forms of discrimination should be captured in an amended paragraph 2(b).**

- **Paragraph 2(b) of the Code should continue to address disrespect in its current broad terms.**

30. In a preliminary decision of a case tribunal in APE 0211-0216 dated 14 January 2005 it was decided that the Adjudication Panel has no jurisdiction to make findings of unlawful discrimination under paragraph 2(a) against a member in the absence of an existing decision of an Employment Tribunal (or another Court) on a complaint made to it of unlawful discrimination If this decision is correct this particular provision of the code is effectively unenforceable and consequently it will fall into disuse.

31. There are two different ways of dealing with the problem. The first is to introduce primary legislation to make it clear that the provision can be enforced The second being to remove the specific provision in the code and to leave it so that such acts are dealt with as disrespect or disrepute ODPM will wish to take a view on what is the most desirable course given the broader Government agenda around promotion of equality.

32. If they decide to adopt the latter approach, at least in the short term they may wish to make the Code reflect the particular forms of respect outlined in the general principles. However, while there may be some merit in seeking to define disrespect solely in the terms set out in the general principles, too narrow a definition would exclude disrespect falling outside those specific categories, but which nevertheless has been seen as unacceptable. The current broad wording seeks to reflect a variety of views on what is disrespectful and provides for each case to be considered on its merits. 'Respect' is a subjective term and it has been the Board's experience that what is perceived as disrespect often varies widely between individuals and between ethnic and local and regional cultures The Board also does not believe that it is the Code's role to be as prescriptive as Parliament about some of the words which may or may not be used by its members.

33. The Board therefore recommends that the provision remains broad but that it draws attention to particular forms of respect in line with the genera principles Respect is an important right and paragraph 2(b) reflects an important principle. Clarification of the term may rather be found through its application in particular circumstances

Bullying

Questions

Q4. 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[1] definition of bullying?

Consultation response

34 There was strong support, from 80% of respondents, for each of the above proposals. However, both those respondents who accepted and who rejected the Acas definition frequently did so with the accompanying explanation or qualification that the Acas definition of bullying did not go far enough. One response explained:

"The Committee had concerns about the Acas definition as it relies on there being a pattern of behaviour and does not acknowledge that a one-off act may involve serious bullying and intimidation." (Luton Borough Council)

35 Respondents supported that a bullying provision should cover bullying of members, officers and the public. A number of respondents offered their own definitions of bullying. There was strong support therefore for the Code's inclusion of a specific provision on bullying covering both patterns and single incidents of member bullying of members, officers and members of the public.

Recommendation

- **The Board recommends that the Code include a specific provision on bullying. The provision should be sufficiently broad to cover (a) both patterns of bullying behaviour and single incidents of bullying and (b) bullying of members, officers and members of the public. The Board recommends that the Code does not seek to define bullying.**

36 The Government has expressed a commitment to include a provision on bullying in the revised Code in the light of recommendations made by the ODPM-convened National Taskforce on Bullying and Harassment in Local Government (2002 – 2004). The Board supports this proposal as a way of making explicit that bullying behaviour should not be tolerated and that people have the right to be protected from bullies. Drawing on the consultation response and its experience of bullying cases to date, the Board further recommends that the provision should be sufficiently broad to cover both patterns of bullying behaviour and single incidents of bullying.

1 The Advisory Conciliation and Arbitration Service (Acas) definition of bullying 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.'

37 The Board has received a number of complaints alleging bullying by members of officers and fellow members As the Code of Conduct does not contain a specific provision addressing bullying, this behaviour has to date been addressed under paragraphs 2(b), 2(c) and 4 of the Code which cover the need for members to treat people with respect, not to seek to compromise impartiality and not to bring the authority into disrepute The nature of the misconduct reflected in complaints of bullying is however more specific than is provided by the current provisions

38. The Board's experience of bullying cases to date informs its opinion that, in a small but significant number of authorities, there is a culture of bullying In response to this, a specific provision in the Code would be a strong signal of disapproval of such behaviour Whist the number of cases of bullying investigated is comparatively small, in cases where bullying has been proven the sanctions delivered by The Adjudication Panel for England have been serious. Whilst legitimate challenges of poor performance will always be necessary, some of the behaviour seen by the Board has been unacceptable and the Board would welcome the Government's recognition that such behaviour has no place in modern local government.

39 However, defining bullying in the Code may give rise to similar issues as defining disrespect To provide a definition will inherently narrow the scope of bullying conduct which could be caught by the Code and limit the extent to which each case could be considered on its merits The Board propose therefore that the provision on bullying does not seek to define bullying conduct.

Confidential Information

Questions

Q5. 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?

Q6. 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?

Consultation response

40. The response to Question 5 has been overtaken by the Adjudication Panel for England ruling in the *Dimoldenberg* judgement that the Code had to be construed as allowing a public interest defence in order to meet ECHR requirements. The Board therefore believes that if that defence has to be implicit within the Code, there is merit in making it explicit on the face of the Code It may be worth noting from the consultation, in terms of potential public response to the Code's inclusion of the public interest defence, that 52% of respondents supported and 48% opposed the public

interest defence Some respondents felt that it was essential to bring the Code into line with the Freedom of Information Act, whilst others expressed concern that an explicit defence would actually work against the Freedom of Information Act, expressing this in:

"The Freedom of Information regime already requires authorities to apply a public interest test to decide whether or not information should be disclosed. If an authority, after due consideration, have come to the view that information is confidential and that it is not in the public interest to disclose it, then the Authority does not believe that is should be open to a Member to make that information public based on his/her view of the public interest." (West Midlands Passenger Transport Authority)

41. Analysis of the consultation response therefore reflects that there may be equal opposition as support for explicit inclusion of the public interest defence.

42. Question 6 gained a much clearer response, with support for the proposal that the Code should only cover information which is in law 'exempt' or 'confidential' by 69% of respondents. The analysis suggests that there is considerable support for the proposal that the Code should cover only information which is in law 'exempt' or 'confidential'

Recommendation

- **The Code should be explicit in allowing members to disclose confidential information where it can be demonstrated that such disclosure was in the public interest.**

- **The Government needs to consider the impact of the *Freedom of Information Act 2000* on confidentiality.**

The Public Interest Defence

43. The Code should be explicit in allowing members to disclose information which an authority has deemed confidential where it can be demonstrated that disclosure is in the public interest It is important that a public interest test does not allow members to use the defence when merely seeking to make political capital through disclosure of properly confidential information. The test should be broadly whether the information would have been disclosable under the Freedom of Information Act as councillors should not be in the situation of being penalised for disclosing information, albeit marked "confidential", which could have been requested via an FOI request The onus should be on a public authority to prove that it has applied the public interest test when it marked a document as "confidential"

44. The following example illustrates the issue and the possible impact of an explicit public interest defence:

45. The APE Dimoldenberg decision has confirmed that, as a matter of law, paragraph 3(a) of the Code of Conduct fails properly to take account of Article 10(1) ECHR. It was found to be a disproportionate response to the issue of the maintenance of confidentiality by councillors as it fails to take account of any of the surrounding circumstances relating to a disclosure of confidential information by a councillor in determining whether he or she was in breach of the Code. The tribunal found that in order to be compatible with Article 10(1), the Code should be read so as to allow for the disclosure of information of a confidential nature in circumstances where it is appropriate in the public interest to do so. The consequence is that these types of issues, and the sometimes delicate balancing exercise they will entail, will quite often need to be decided by an independent tribunal.

46. Article 10 of the European Convention on Human Rights provides:

10(1) everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority...

10(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

47. The context for the case was the pursuit, by Westminster City Council, of Dame Shirley Porter for some £37m as a result of a judgment of the House of Lords, for her role in the "Homes for Votes" scandal in the 80's. The tribunal found that Cllr Dimoldenberg had, since that judgment taken a personal and persistent interest in ensuring that the Council take action to ensure that the money was recovered. As part of the Council's pursuit of the debt, diverse orders were obtained against named third parties and those orders were subject to gagging orders by a sequence of High Court judges, prohibiting disclosure not only of the contents of the orders but also of their existence. At his request, the Council provided Cllr Dimoldenberg with information about the steps the Council was taking through the courts in pursuit of that debt, which included details of the gagging orders. Cllr Dimoldenberg was fully aware of the nature of the gagging orders. Notwithstanding that understanding, he shared some of those documents and the information on the gagging orders with a BBC journalist and two other individuals.

48. The tribunal reasoned that Councillor Dimoldenberg exercised his Article 10(1) right of freedom of expression when he imparted information to the BBC, some of which was confidential. Having found as a fact that Councillor Dimoldenberg was a journalistic source, the Tribunal found that Councillor Dimoldenberg was able to rely on section 12(4) of the Human

Rights Act 1998. This requires the Case Tribunal to have particular regard to the interference of the Convention right to freedom of expression particularly where, as in this case, the proceedings relate to journalistic material to the extent to which the material has, or is about to, become available to the public or it is or would be in the public interest for the material to be published and any relevant privacy code."

49 In determining whether the Article 10 right to freedom of expression could be restricted the Case Tribunal undertook a balancing exercise

50. Factors in favour of disclosure –

- Article 10(1) freedom of expression
- the particular regard to be had to any interference with the Article 10 right particularly where the proceedings relate to journalistic material
- the maintenance of a free press
- the watchdog role of the media particularly on matters of public concern
- the motive was not self-serving or wanton
- the assurance from the BBC journalist that the information was required as 'deep background' only
- the interest of the public in the inactivity of WCC to recover the surcharge
- The 'untroubled mind' of Councillor Dimoldenberg in disclosing the information

Factors against disclosure –

- the requirements of councillors to comply with the statutory declaration of office and as a consequence to comply with the code of conduct in order to be able to receive confidential information
- a risk that disclosure would have hindered the recovery of the surcharge
- a risk that active steps in the recovery process would have been revealed
- The High Court Restriction on Communication Orders which are rarely given
- The Restriction on Communication Orders were considered, deliberate, specific restrictions imposed only for the length of time necessary to aid the recovery of the sums owed by WCC

51 In conclusion the Case Tribunal found that whilst the free exchange of information and ideas on matters relevant to the organisation of the economic, social and political life of the country is crucial to any democracy, the Restriction on Communication Orders made by the High Court were critical elements in the recovery process. The Restriction on Communication Orders were a proportionate response to restrict the right to freedom of expression bearing in mind the potential for large sums of money to be moved out of the jurisdiction and out of reach of Westminster. The Case Tribunal therefore concluded that in this case the Article 10 right of freedom of expression was rightly subject to an Article 10(2) exception and whilst the threshold is a high one to cross, because of the recognised importance of press freedom, it was the responsibility of Councillor Dimoldenberg in the light of the Restriction on Communication Orders to prevent the disclosure of information relating to the third party disclosure orders that he had received in confidence.

Confidential Information

52 Paragraph 3(a) of the Code 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.

53. However, as it is drafted, this has been a difficult paragraph to interpret. There have been calls for the provision to be amended in the light of the distinction between 'information given in confidence' and 'information of a confidential nature', the requirements of the *Freedom of Information Act 2000* and the perception that more information considered at council meetings is categorised as 'confidential' than meets the strict legal criteria. The board believes that some in local government, particularly in the parish sector, continue to treat too much information as confidential and, given the Government's commitment to freedom of information, that consideration needs to be given both as to how the Code can address this and whether the local government access to information provisions need to be revisited in the light of the Freedom of Information Act.

54. These issues arose for the Ethical Standards Officer's consideration in the case of SBE5874.04. The complainant alleged that the member quoted from a confidential email about the clerk's expenses and allowances to members of a political group at a Finance and General Purposes Committee meeting on 15 January 2004.

55. The Ethical Standards Officer considered that the email was not given to the member in confidence. The purpose of the email was to advise the members of the political group about issues that were going to be discussed publicly at the meeting, and which were already in the public domain and it did not contain information that councillors were required by law or by the council to keep confidential. The Ethical Standards

Officer concluded that the information disclosed by the member was not confidential for the purposes of the Code. The Ethical Standards Officer was not satisfied that the member breached the Code of Conduct by disclosing confidential information and found that no action needed be taken.

56 This case, among others similar investigated by Ethical Standards Officers, highlights the need for greater clarity about the type of information which will be considered confidential for the purposes of the Code, in order that there is a greater degree of congruence between what might be considered confidential for council purposes and what is considered to be confidential under the Code.

57. A further technical issue which arises with this paragraph is that technically it only applies to information disclosed by a councillor in an official capacity. That could mean that a councillor could claim that, although they have disclosed confidential information, they were not doing it in their capacity as a councillor. The Code should be amended so that it covers material received by a councillor in his or her official capacity or which relates to the work of the council. It should not be extended to cover confidential information which is received outside of official capacity and has no bearing on the work of the authority.

Disrepute and Private Conduct

Q7. 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?

Q8 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?

Consultation response

58 In response to Question 7 there was significant support (76%) for the proposal that disrepute continues to apply to certain activities in a member's private life, though this support was often qualified by comments of the following nature:

"It should continue to apply but be restricted to where actions, though private, are in the public eye." (Filey Town Council)

"The provision relating to disrepute needs specific parameters in regard to one's private life e.g. if one's behaviour undermines the public confidence in their ability to carry out their duties" (Birdham Parish Council)

"It should continue as now but be restricted to behaviour in a public place." (David Milstead).

"As holders of a public office, Members should behave impeccably at all times and therefore, the provision should continue to apply to certain activities in a Member's private life " (Simon Quelch, Maldon District Council)

59. The analysis of the responses suggests that the provision relating to disrepute should continue to apply to certain activities in a member's private life.

60 Question 8 elicited a response of 76% in favour of the status quo of a broad provision on disrepute, accompanied by comments such as:

"It should continue to be a broad provision Otherwise there would be no basis for challenging unlawful actions or the general character and suitability to represent local electors of members who become subject to sanctions such as those quoted in the full consultation paper." (Oswestry Borough Council)

Recommendation

- **The Board recommends that certain behaviour outside official duties should continue to be regulated, but only matters that would be regarded as unlawful conduct.**

61. In considering its recommendation, the Board has been mindful of the reports of The Committee on Standards in Public Life and the ODPM Select Committee which both, to a greater or lesser degree, want to restrict the Code's scope to public life. However, the strong message from the consultation and the roadshows is that the Code should continue to regulate certain private activities The Board believes that the Code should continue to cover certain conduct which does not directly relate to official duties

62 The Board recognises the views expressed by some that only matters relating to council business should be regulated. However, some of the private activity that the Board has considered, such as false claiming of housing benefit, assaults on members of the public or downloading of illegal pornography does have the potential to bring a member's authority or office into disrepute and, consequently, the Board believes that this provision should continue to have some wider application. However, the Board believes the provision could be further clarified to demonstrate that it is only unlawful activity committed outside of official duties which should be regulated and not activities of which certain individuals may merely disapprove. Disrepute in private life should be reserved for cases of unlawful activity such as criminal or cautionable offences, not civil matters or merely reprehensible conduct

63. Narrowing the provision towards unlawful activities, rather than behaviour of which one might disapprove, will also tie the provision closer to the referrals criteria already used by the Board which seek to capture complaints of legitimate public concern where a member has fallen below a recognised standard rendering them unfit for public office

64. A counter-argument to such regulation of private activities is that the ballot box should be the recourse open to the public to voice their disapproval of a member and their private conduct. However, it can also be argued that the electorate vote for policies – not individuals. If electors want to vote for the policies of a particular political party, but the councillor from that party has committed some offence, electors may still vote for the councillor, despite their misbehaviour or have no option but to vote for the policies of another party or to refrain from voting. Given these alternatives, electors may, even unwillingly, vote for the misbehaving councillor rather than unattractive policies. The Code provides balance and redress for the situation where the electorate does not have the opportunity both to vote for the policies they desire and to sanction misbehaving councillors. Further, broad analysis of election outcomes reflects that the election of a new councillor in favour of a councillor with a history of misbehaviour is seldom a matter of the misbehaviour in isolation.

65. Research has shown that almost all professional codes, with the exception of the Parliamentary Code, cover disrepute arising from activities in private life. The Board see no reason why this general principle should apply differently to local government members. Parliament's intention in regulating councillor behaviour has been that certain conduct is so serious as to merit a member's disqualification, prior to the expiry of a their term of office, whether it be an automatic disqualification where a councillor receives a conviction for a period of more than three months, even where it is a private matter, or a disqualification following an adjudication by the Adjudication Panel for England. The automatic disqualification provision therefore gives clear precedent for private capacity issues to prevent a member from serving as a councillor. The Code allows discretion to consider issues which fall under that threshold to be considered on a case-by-case basis to see whether they merit some form of sanction against the councillor concerned.

66. The Board intends that each of the Code provisions should be referable to at least one of the ten general principles. Considering disrepute and private conduct, one of the general principles is a duty to "uphold the law and, *on all occasions*, act in accordance with the trust that the public is entitled to place in them". That disrepute should include unlawful activity is therefore in accord with the general principle's requirement that members act lawfully at all times. Parliament's intention that certain areas of a member's private life be addressed by the Code is evident also in the provision on undue influence, which also applies to a member's private life. If the scope of disrepute is limited to public life, it is arguable that this limitation be consistently applied across the Code, which would entail amendment to the provision on undue influence, thereby limiting its scope. The Board believes that would be a retrograde step. However, limiting the scope of disrepute in a member's private life to unlawful activities will further clarify what activities are regulated by the Code and assist in decreasing the number of trivial complaints.

67. This proposal reflects the Board's consideration of both Committee reports and acceptance of their arguments that some private activity is essentially private. However, by making clear that there are also some activities which are so serious that they are regulated would reflect Parliament's intentions for the Code, consistency across the Code and practical application of the general principle of lawfulness.

68. The Board believes that the following three areas should be perceived as being capable of bringing the authority into disrepute:

- an activity carried out in an official capacity;
- an activity which has been deemed unlawful – for example where there has been a conviction or a caution has been accepted or some other sanction imposed by a law enforcement agency which has the power to make criminal sanctions. In such cases this would be a penalty below a 3-month conviction;
- an activity which may be seen as unlawful although no case has been brought. An example of this would be where the member is alleged to have committed an assault and, whether the activity was unproven, denied or admitted, the police decide not to prosecute. In such cases, the Board does not want its Ethical Standards Officers to be seen as reaching a view on whether a criminal act has been committed but merely whether such an act, which may potentially be unlawful, and be perceived as such, should be deemed as having made the member unfit for public office.

Misuse Of Resources

Questions

Q9. We believe that the Code should address the three areas set out in 4.4.11 (prohibiting breaches of the publicity code, breaches of any local protocols and misuse of resources for inappropriate political purposes)? Do you agree?

Q10. If so, how could we define 'inappropriate political purposes'?

Q11. Is the Code of Conduct right to distinguish between physical and electronic resources?

Consultation response

69. That the Code should prohibit breaches of the publicity code, breaches of local protocols and misuse of resources for inappropriate political purposes (Question 9) was supported by a significant majority (84%) of respondents.

70. Question 10 and its request for suggestions of a definition of "inappropriate political purposes" received a wide range of views, no one, consistent definition emerging from responses. Some argued that to attempt a definition may be self-defeating,

"To some extent any definition could lead to a problem that could increase the number of politically motivated complaints being made. There will sometimes be a very fine dividing between where the business of the council ends and inappropriate political purposes begin." (Medway Council)

71. Most responses looked to common themes. The first theme looked to distinguishing advantages for one particular political party:

"Anything purely party political and not connected to the functions of the local authority" (Harlow District Council)

"Possibly any activity which is intended purely to promote political party interests." (Northumberland County Council)

"A decision taken where the outcomes can only benefit the aims of a single political party." (Dawlish Town Council)

"Anything that uses resources to promote any political view over another." (Longhorseley Parish Council)

72 The second common theme looked to inappropriate behaviour during election campaigns. Several respondents also suggested that the word 'inappropriate' be removed. A small number of responses offered detailed definitions, such as:

"Inappropriate political purposes" is the use of any Council resources, human, physical or electronic, the purpose of which is to

make mention, directly or indirectly, with or without endorsement of any political parties or the stated or existing or proposed policies of any particular political party locally or nationally of which they approve, or

make mention by way of comparisons positively or negatively, on the existing or stated or proposed policies or any other political party, or

foster in the public mind directly or indirectly, overtly or covertly, that any actions taken are attributable to the stated or existing or proposed policies of any particular political party, or

foster a negative reaction in the public mind directly or indirectly, overtly or covertly, that any actions taken are attributable to the stated or proposed policies of any other political party as a consequence or part of (3) above, or

foster the perception that the public should favour a particular political party at any forthcoming elections, whether as a consequence of (1) or (4) above or not." (Havant Borough Council)

73. Question 11, whether the Code is right in not distinguishing between physical and electronic resources was supported by 94% of respondents, strongly suggesting that 'resources' in paragraph 5(b)(i) should remain a general term.

Recommendations

- **The Board recommends that local protocols should be enforced locally where appropriate, with the Board only becoming involved where serious misuse of public resources has been alleged.**

- **Serious misuse of resources, particularly for political benefit, should be regulated nationally.**

- **The Code should contain or provide for a broad definition of "inappropriate political purposes."**

74. The Board believes that misuse of resources is best dealt with through local protocols in the first instance. Many authorities have effective local protocols governing the use of council resources. Of all the areas covered by the Code of Conduct, the use of authority resources is the one which is perhaps most suited to reflecting the custom and practice of individual authorities. Setting out specific requirements for members' use of specific resources should not be the Code's intention. All authorities should be encouraged to adopt effective protocols, enforcement of which should broadly be left to the local level, with the Board only becoming involved where serious misuse of public resources has been alleged

75. The Board propose that trivial and minor cases of misuse of resources should not come to The Standards Board at all or should be dealt with at a local level. Only serious misuse of public resources should remain with The Ethical Standards Officer for investigation

76 The Board's experience indicates that the vast majority of parishes have not yet adopted local protocols for resource use. In the absence of these protocols and of other avenues to deal with complaints about resource misuse there is a danger that such complaints would still come to The Standards Board. There would be considerable disparity in the Board dealing with both the most serious cases but also minor cases simply because of the absence of any local protocol.

77 The Government is therefore asked to consider what appropriate avenues might be used to deal with minor misuse of resources where the local authority has no protocol in place.

78. Cases highlight instances for a more effective provision on misuse of resources and the need for local protocols. In SBE7575.04 the member used the council secretariat to help them to produce four letters of a political nature. The case was referred to an Ethical Standards Officer who referred the case for local determination. This case reflects minor resource misuse which could have been dealt with locally through administrative penalties.

79. In another case, SBE2278 03 it was alleged that the member used council computer and photocopying facilities to produce a party-political newsletter The member admitted use of the computer facilities but claimed that, due to the absence of a local protocol covering resource use that the member was unaware of any wrongdoing. The Ethical Standards Officer considered the case and found no action need be taken. The Ethical Standards Officer noted that there was no council protocol for computer use and so concluded that the member did not breach the Code of Conduct by failing to comply with their authority's requirements for the use of computers. However, they did consider that the member breached the Code by using the computer for party-political purposes. It was accepted that this was unintentional and the result of insufficient guidance. The local authority concerned did not have a protocol or training on resource use The use of the resources in question by members was custom and practice at the authority, although a breach of the Code. The member had only continued to use the computer to produce the newsletter because they had not been advised that it was inappropriate to do so. These cases highlight the need for local protocols on the use of resources which can be enforced locally with recourse to the Code and the Board only for serious issues.

Physical and electronic resources

80 Views on members' accountability for resources span a wide spectrum, reflected in the local resource protocols already adopted The 'resources' covered by section 5(b)(i) and (ii) are broad. 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 but often with the caveat that members' personal use of authority equipment should not be for illegal or personal business purposes.

81. The majority of complaints received by the Board to date alleging breach of paragraph 5(b) have alleged inappropriate use of IT and electronic resources. This emphasis reflects the contemporary prevalence of the use of computers, e-mail and the Internet for professional and personal communications However, paragraph 5(b) currently refers to 'resources' generically and it was the strong message from the consultation that it should continue to do so

Political purposes

82. The term 'political purposes' in paragraph 5(b)(ii) was, the Board believes, 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.

83. However, the Code of Conduct 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 their intentions are important to this part of the Code. For example, when elections are pending, members should be particularly scrupulous about the use of authority resources.

84. The consultation clearly showed that consultees' main concern was about misuse of public resources for party-political advantage. The Board recommends that the Government clarifies the Code's provisions to better control such abuse, being mindful of the broad range of responses on the definition of "inappropriate political purposes", and how it should relate to the existing publicity code for local authorities.

Duty to report breaches

Questions

Q12. Should paragraph 7 be retained in full, removed altogether or somehow narrowed?

Q13. 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?

Q14. Should there be a further provision about making false, malicious or politically-motivated complaints?

Q15. 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?

Consultation response

85. Question 12 asked whether paragraph 5(b) of the Code should be retained, removed or narrowed. 42% of respondents wished the provision to be retained, 42% wished it narrowed and a significantly smaller 16% of respondents argued for its removal. However, respondents who wished the provision's removal expressed strong feelings supporting their argument:

"We believe that, in the complaints that have been submitted to the Board to date, there are numerous examples of political mischief masquerading as self-righteous whistle-blowing, and that this brings the process into disrepute. Reporting alleged breaches should be a matter of conscience rather than prescription and this provision should be deleted." (Stockport Metropolitan Council).

86 Those who responded to Question 13 with suggestions as to how paragraph 5(b) might be narrowed, overwhelmingly accepted the consultation paper's suggestions of it being narrowed to address members acting in a public capacity or significant/serious breaches of the Code. Other issues raised included whether or not the member had knowledge, as distinct from suspicion, of any wrongdoing and whether or not the monitoring officer could act as a filtering mechanism for allegations, expressed as:

"The obligation could be narrowed to matters that a particular member has personal knowledge of and is the matter is of a particularly "serious" nature." (Birmingham City Council)

"The provision should apply to both misconduct in a member's public and personal capacity and to significant breaches of the code." (Haringey Council)

"It could be reported to a Monitoring Officer or chair of a Standards Committee who could decide whether the complaint was sufficiently serious enough to be sent to the Standards Board." (Birdham Parish Council)

87 That the Code should include a further provision for making false, malicious or politically motivated allegations (Question 14) was supported by 61% of respondents.

88 In response to Question 15, a significant number of respondents across parishes, individuals, local authorities and stakeholders believed that the Code already provides adequate protection for members and witnesses against intimidation.

Recommendation

- **The Board recommends that the duty to report breaches should be removed from the Code.**

- **The Code should include protection against intimidation of complainants and witnesses.**

- **All involved in the process, including members, need to take greater steps nationally and locally to discourage vexatious complaints.**

89 The provision of the Code which requires members to report breaches to the Board has been unpopular. The Board believes it had two underlying purposes – to prevent members from turning a blind eye to serious misconduct by their colleagues and to protect members who wished to come forward and report fellow members in spite of pressure to do otherwise. The Board does not believe the present provision achieves either of these aims satisfactorily, and instead has been perceived as leading to members using the provision as a pretext for making trivial allegations to serve political ends.

90. The consultation paper proposed 5 options for this section:

a. the provision remain unchanged;

b. limit it to a duty to report 'serious' breaches;

c. limit it to official capacity;

d require members to seek the views of the monitoring officer or standards committee whether it should be reported; or

e. remove the provision and rely on members' integrity and observance of the general principles for them to report matter to the Board.

91. Options iii and iv were not attractive for a number of reasons. Whilst members should not be asked to 'police' private lives, the duty to report applies if members become aware of matters which may breach the Code, and some of the more serious matters in the past have related to private activities. It would be inappropriate if more minor matters under the Code had to be reported but serious matters relating to unlawful activity did not have to be brought to our attention. Option iv, which would in effect introduce a 'local filter' was considered in order to reflect the current representations from certain sections of local government that they should have a greater role in remedying matters before they come to the Board. The 'local filter' debate is a broader and separate issue to the review of the Code. It would however seem odd for there to be a 'local filter' for member-member complaints and not for others. The introduction of such a provision would also give rise to difficulties the Board then referring cases back – given conflicts of interest if the initial allegation had been sanctioned by the monitoring officer or standards committee – and would potentially mean involving the monitoring officer and their available resources further in dealing with parish issues at that early stage of the process.

92 Option ii – whether the provision should be retained but limited only to allegations of serious misconduct – was the most popular option in consultation. However, on reflection the Board believes that any attempt to draft such a provision would lead to inherently subjective views on what was or was not 'serious'. This would lead to arguments about what should and should not have been reported and would be unlikely to address the concern about trivial allegations. The Board is aware that the ODPM Committee, which debated this provision of the Code, made a strong recommendation that the provision should be retained, not least on the basis that similar provisions appear in other codes of conduct. However, on balance, having considering the issues and options above, the Board believes the provision should be removed from the Code.

93. However, the two underlying concerns the original provision sought to address need to be considered. While the Board believes that the vast majority of members would not turn a blind eye to serious misconduct, it believes that for those handful of cases where there does appear to be a serious conspiracy, existing powers in the Code can be used to deal with the issue. The Board is also concerned that members who do report serious misconduct should be protected from victimisation in the same way that employees are protected by law. Although such an activity can already be policed within the Code, for example through failure to treat with respect, such an explicit provision would specifically address protection of complainants and witnesses and demonstrate to members that victimising complainants and witnesses will only serve to exacerbate the case against them. One way of doing this would be to have a provision prohibiting intimidation of a complainant or witness and the Board recommends that the Government should consider this option either as a stand-alone provision or augmenting the disrespect provision.

94. The Board does not believe, on balance, that a provision is needed in the Code to make it a specific offence to make a false or vexatious allegation. This view was supported by the ODPM Committee. In all but the most blatant of cases, it may be difficult to prove that an allegation was knowingly false or malicious. The Board's role should be to consider the nature of the allegation not the motive behind it (whilst seeking to discourage such complaints). Such a provision could deflect investigators' time into looking into the motives behind an allegation and could have the perverse effect of generating more tit-for-tat complaints as members who are the subject of a complaint may ask the Board to investigate the complainant for making a false allegation as some form of revenge. In addition, the Board only has a remit to investigate councillors so could not look into the motive behind allegations from other sources.

95. However, the Board is committed to work with the Government to find further ways of reducing politically-motivated complaints. The Board is particularly concerned about examples it sees of allegations being reported in the local press, often before they have even been sent to the Board. Such activity damages the reputation of local government as a whole, and all concerned need to find better solutions to prevent such mischief. ESOs have already taken cases against members for bringing their authority into disrepute where they have discovered allegations to have been made where the member concerned has known them to be false. Where the Board comes across a case where a member has made a malicious allegation and is seeking to publicise that allegation, the Board will seek ways to investigate that member for disreputable behaviour. Any further actions to stop such seeking of political capital may be outside the scope of the Code review, but the Board wish to explore options with Government, representative bodies and local authorities as to how the ethical framework can be used more sensibly to the benefit of all.

Registration and Declaration issues

Personal and Prejudicial Interests

Q16 Do you think that the term 'friend' required further definition in the Code of Conduct?

Q17. 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?

Q18. Should a new category of 'public service interests' be created which is subject to different rules of conduct?

Q19. 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?

Q20. Do you think that paragraph 10(2)(a-c) should be removed from the Code of Conduct?

Q21 Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

Q22 Should members with a prejudicial interest in a matter under discussion be allowed to contribute to the debate before withdrawing from the vote?

Q23. Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

Consultation response

96 In response to Question 16, 67% of respondents opposed the introduction of a definition for 'friend' in the Code. Even respondents who endorsed the need for a further definition of 'friend' stressed the difficulty of defining the concept:

97 "The Authority considers that the term should be defined. The case review advice is elaborate and not necessarily available to Members. The Code should carry its own answer to this question." (Derbyshire County Council).

98. The difficulty of defining the term was also highlighted as a reason not to offer the definition.

"No. The definition will evolve through decided cases. In general terms, people should be able to apply a common sense definition to most circumstances." (NALC)

"No matter how many words, sentences, paragraphs, chapters or volumes you care to write, you will never be able to define what a friend is. In fact, can you really determine who is or is not a friend even among your own kith and kin?"

99 The evidence suggests that the Code does not require a further definition of 'friend'.

100. Question 17 and the proposal that 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 was supported by 68% of respondents. Evidence suggests therefore that the personal interest test should be narrowed. A typical response was:

"Open and transparent local governance is essential for a healthy democracy The current Code and the Standards Board's guidance on para. 10(2) have not sufficiently distinguished between the different types of personal interest that can arise. This has resulted in confusion and anxiety and, in some instances, the application of an absolute exemption from the rules on prejudicial interests. For the sake of certainty, clarity, and consistency, the narrowing of the personal interest test could be achieved." (Dartford Borough Council).

101. The proposal of Question 18, that a new category of 'public service interests' be created again drew respondents' general support, being 66% of responses. This proposal was particularly welcomed by authorities that perceived a problem and a compromise of effectiveness with the Code's provision for "dual-hatted" members.

"The Code has undermined the effectiveness of members and has resulted in a bureaucratic nightmare which brings the meetings of the Town Council into disrepute. The meetings have become dominated with declarations of interest." (Felixstowe Town Council)

102. The evidence suggests therefore that there is significant support for the creation of a new category of 'public service interests'.

103 However, evidence for the proposal that public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings, set out in Question 19, was inconclusive. 44% of respondents suggest that declarations should be made, whilst 56% of respondents argued that the declarations were unnecessary.

104 Question 20 proposed the removal from the Code of paragraph 10(2)(a-c), which provides limited exemption from prejudicial interests rules for some members in certain circumstances. Despite the support for a narrowing of the personal interest tests and the introduction of a new public service interest test, the response as to the removal of paragraph 10(2) (a-c) was inconclusive. 46% of responses suggested that the paragraph be removed, while 54% felt it should be retained.

105 Evidence for the proposal that less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups (Question 21) was also inconclusive. The inconclusiveness was exacerbated by the fact that few respondents distinguished between charities, lobby groups and public service organisations in their responses. There was difficulty therefore in assessing what exactly respondents were agreeing or disagreeing with, although 55% of the total valid respondents supported the proposition and 45% opposed it.

106 Questions 22 and 23, which raised whether members with a prejudicial interest in a matter under discussion should be allowed to address the meeting before withdrawing and whether members with public service interests should be allowed to contribute to the debate before withdrawing from the vote both evoked passionate responses from their supporters and opponents.

107 The potential scope for undue influence by members was emphasised by their opponents, in terms:

"In all circumstances if a Member has a prejudicial interest he/she should leave the room. The rule needs to be kept as clear and simple as possible so the public can be satisfied that a Member cannot exert influence by being a "brooding presence"."

108. However, those who supported the proposals generally did so from a consciousness of members being denied the same rights that members of the public enjoy:

"Although it is argued that a member's presence may unfairly influence other councillors, this surely applies to any member of the public. After all, members of the public do not attend council meetings for entertainment – almost everybody in the pubic gallery is there precisely because they have an axe to grind."

109. Others felt that even where the propositions were supported in principle, they would be almost impossible to carry out in practical terms. Analysis of the responses was inconclusive. 50.25% of respondents believed that members with a prejudicial interest should be allowed to address the meeting before withdrawing and 54% believed that members with a prejudicial public service interest should be allowed to contribute to the debate before withdrawing from the vote.

Recommendations

- **The rules for personal and prejudicial interests should be clearer, especially for members who sit on more than one public body.**

- **The Code does not require a definition of the term 'friend'. The Board, however, proposes that an alternative term such as "close personal associate" is needed.**

- **There should be a reduction in the number of personal interests which need to be declared. The definition of personal interest should be amended so members need not declare an interest where it is merely something that they share with a wide community.**

- **There should be greater support for the councillor's role as an advocate for their community. Interests which arise solely because a member serves on another public body, or is advocating on behalf of an outside body such as a charity or local pressure group, known as 'public service interests', should be treated differently from interests that arise as part of a member's private life.**

- **There should be greater local discretion to grant dispensations. Government should consider giving local authorities broader powers to grant exemptions to members with prejudicial interests who nevertheless are speaking on behalf of their constituents.**

110 It is clear from the consultation that Part II of the Code is the section with which members and the public are most greatly dissatisfied. This may be attributed to a greater need locally for guidance on interests, though may also point to the need to make its provisions simpler and clearer

Personal Interests

The definition of friend

111 Paragraph 8 was drafted broadly, and though other terms used in paragraph 8, such as 'relative' and 'partner', are defined in the Code, the term 'friend' is not. In the absence of a definition, the term's common-sense, everyday definition applies. The Board believes that it is the role of guidance, not of legislation, to define what friendship is or is not and similarly for paragraph 8's use of the term 'wellbeing'. The Board has issued guidance on both these terms. Defining 'friend' and 'wellbeing' in legislation would likely lead to more, rather than less, contentiousness around terms. Not seeking to define the terms has been endorsed by the consultation response.

112 While the Standards Board has issued guidance on the meaning of 'friend' which has been generally been well received as practical help, the Board would like to raise for the Government's consideration use of an alternative phrase to 'friend' of 'close personal associate'. This phrase may

more effectively capture the breadth of relationships sought to be caught by paragraph 8 and has been proposed for use in the new Welsh code, as follows:

a Members must regard themselves as having a personal interest in any matter 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.

i the well-being or financial position of the member, or of a person with whom the member lives, or any person with whom the member has a close personal association or close personal connection.

113 The purpose of paragraph 8 is to serve the principal of transparency in decision making. 'Close personal associate' offers broader scope than 'friend' to address business and professional associations, as well as the friendships which may influence members' decision making. A case illustrating this is APE0140. A councillor was a member of a joint committee responsible for the selection of a preferred bidder for the development of a beach. A fellow councillor advised the Chief Executive of conflict of interests through a 'significant business relationship' held by the member with an individual who was part of the consortium awarded preferred bidder status for the redevelopment. The ESO found that the member had had a number of business relationships with the person who was part of the consortium, including previously holding a number of directorships and shares in companies. The case tribunal held that a reasonable and objective observer, having knowledge of the business interests of the member, would conclude that public confidence could be diminished and the authority brought into disrepute by the denial of interests where they clearly existed. This case was determined under paragraphs 2(b) and 4 of the Code but also highlights the scope of the relationships relevant to transparency in decision-making, specifically past business relationships, which are not currently captured by the scope of the term 'friend'.

114 The term 'friend' does not capture members' relationships with business associates and acquaintances who, due to past or prospective dealings with the member may influence their decision making. Any change to use of the term 'friend' is unlikely to increase significantly the number of cases within the Board's remit but will deal with some associations which cannot be properly defined as "friendship".

115 The definition of 'relative', if it is to be retained, also merits further consideration. The present definition does not include (a) a sibling of the member's spouse, though it does include the spouse of a member's sibling or (b) cousins

Inhabitants of an authority's area

116. The Board believes that the test in paragraph 8 of interests affecting "inhabitants of an authority's area" may be too broad for authorities above the town and parish sector (although the issue may arise also for the largest town councils and those which are an association of distinct communities) and needs clarification. 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

117. The phrase 'the authority's area' can be very broad, particularly in large rural areas with distinct communities. In large authorities particularly this requirement is a difficult judgment for members and, in practical terms, leads to a large number of declarations on matters that are not of genuine concern to the public. It undermines the Code's integrity when a member has to declare personal interests which are in fact shared equally with a large number of people and meetings are taken up with a large number of such declarations

118 The Board believes that a narrower test should be used in paragraph 8 and that members should not be required to declare interests which are shared to the same extent by a substantial number of other inhabitants in the authority's area This proposal is endorsed by the consultation response. The Board proposes narrowing the definition of personal interests for members of principal authorities such that members only need declare a personal interest when the interest might reasonably be regarded as affecting the member to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward which they represent or wards which are affected by the decision. The test could remain unchanged for parish and town councils. For those authorities where members are not elected on a ward basis (such as police authorities or the GLA) and to deal with the issue of the larger or more dispersed towns and parishes the second limb of the test – the ward or wards of the principal authority affected by the decision may be appropriate

Public Service Interests

119. Given the prevalence of member involvements and appointments to public bodies, the Board believes that the current requirement on members to declare their membership of other public bodies as a personal interest at the start of any relevant business places an onerous and ongoing responsibility on members The impact of the present paragraph 9 is that lengthy periods in meetings may be devoted to members' declarations of their personal interests. This is seen as an unnecessary obstruction to effective local democracy

120. The Board believes that a new approach is required for members who serve on other public bodies. The Board recommends the creation of a new category of interests – 'public service interests'. 'Public service

interests' arise where a member is also a member of another public body, to which they have been appointed or nominated by the authority as its representative, or of which they are a member in their own right.

121. Further, the Board proposes that if a public service interest is merely a personal interest, that it is registered but does not need to be declared at meetings until such time as the member speaks on a relevant issue. This would stop the need, for example, for all LEA-appointed councillor governors to declare at the start of a debate at full Council on education strategy even if they have no intention of active participation but would mean that where a member chose to contribute to the debate they should declare their interest at that point simply by saying, for example, "as an appointed school governor I wish to say..." This would allow the public to understand the stance and experience from which a member speaks but, if the member were not to speak, the councillor would not have to declare their public service interest to the meeting. A member of the public would be able to check the register of interest later if they wished to compare a non-speaking member's public service interest against the way they had voted

122 The Board propose that careful narrowing of the provision such as this may more effectively balance the need to reassure the public that decisions are being taken in the public interest, with defining, more reasonably, the personal interests members are required to declare at meetings and allowing better administrative management of meetings.

Prejudicial Interests

The Richardson Question

123 The consultation paper considered the two general questions on the issue of prejudicial interests and involvement in council decision-making considered by the Court of Appeal in the case of *R (on the application of Richardson) v North Yorkshire CC [2003] EWCA Civ 1860*:

1 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 participants in the meeting?

2. Is a member with a prejudicial interest entitled to attend a meeting in his or her personal capacity?

124. 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

perceived influence of the councillor is so much greater than that of a member of the public that a loosening of the prejudicial interest test would undermine the integrity of the decision-making process and damage public confidence. The member is still to be regarded as conducting the business of their office, and only by resigning can a member shed this role.

125. This consultation was a further opportunity to consider whether the Code should be amended so that 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 an argument that councillors should have the same right to make representations as members of the public. However, the Code 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.

126. Paragraph 10 of the Code attempts to protect parity and transparency by preventing members from using their position to exert influence over decision-making. The Board 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. While it is quite right that members influence decisions, the Code seeks to ensure that the influence is not improper.

127. However, while there are avenues available to members to present their constituents' views, apart from personally addressing a meeting, the restraints on interests imposed by the Code and the way they have been interpreted locally have been perceived as undermining the efficacy of the role members are able to play as community advocates, even where they as an individual have no actual decision-making power at the meeting. The Board proposes that, in consideration of the importance of the advocacy role played by members and members' widespread community involvements that modified and less stringent provisions are introduced, specifically for members with prejudicial interests which arise out of public service interests or membership of charities and lobby groups.

Paragraph 10(2)

128. The implications of the above proposals and those for paragraph 12 (see below) will be to make much of paragraph 10(2), as it relates to dispensations, obsolete. However, since their introduction, the inter-relationship of the Code and the dispensation regulations has raised difficult issues at administrative law. The Board proposes that paragraph 10(2) is removed from the Code and replaced by a list of limited but absolute exemptions. As well as improving the clarity of the Code, a Code which, in and of itself, presents a comprehensive and consistent regime of duties and exemptions will satisfy the objectives of simplicity and clarity more readily than a regime given effect by a number of statutes and regulations.

129. The intention of paragraph 10(2) was to balance three principles:

i. that members must withdraw from consideration of issues where their interests would prejudice the exercise of their public duties;

ii. 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;

iii. that the rules on interests are not intended to interfere with the proper conduct of council business.

130. Paragraph 10(2) deals with situations where members have interests arising from their public office or from service on other authorities and public bodies, or where rules regarding 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.

131. Although paragraph 10(2)(a–c) was drafted with the intention of assisting members who serve on more than one body, the Board believes that it has not achieved that aim. The section has incorrectly been widely misconstrued as giving members an absolute exemption from the rules on prejudicial interests. At the same time, the Code provides no guidance on when members can appropriately rely on paragraph 10(2)(a–c), which has led to confusion. The Board has taken Counsel's advice on the difficulties presented by the current paragraph 10(2) (a-c). The Board's proposals to changes to interests, and in particular the introduction of a public service interest, would obviate the need for paragraphs (a-c)

132. The Board therefore proposes that paragraph 10(2) is removed from the Code and replaced by a list of limited but absolute exemptions which relate to the proper conduct of the authority business. In addition to the existing categories, these should also allow members to:

- vote on indemnities
- appoint themselves to a position of responsibility
- attend and make representations at a standards committee hearing concerning an allegation against them

133. It has also been suggested that where the member's spouse is also a member of the authority they should be permitted to make use of such exemptions.

134 Consideration should however be given to the current wording of paragraph 10(2)(d) as this has given rise to the assumption among members that they will have a prejudicial interest for the purposes of this section only if the matter being discussed directly relates to their property. The Board believes this assumption is incorrect but has arisen because of the reference also to rent arrears for the member's specific property in the same paragraph.

Paragraph 12

135 The Board believes that the Code does not sufficiently distinguish between the different types of interests that can arise, and proposes that a specific and less onerous prejudicial interest test apply to (i) public service interests and (ii) interests arising from membership of charities and lobby groups Where a member has a general prejudicial interest not covered by these categories of exemption the rules should remain as at present i e the member should not participate in the meeting and should withdraw.

136. However, the Board recommends that the less onerous rules for participation for those special categories are necessary. The Board believes that there should be no objection, in principle, to an individual serving on a number of public bodies The fact that an issue considered by one body may involve another body with which the member is involved does not necessarily mean that the member's judgment of the public interest will be prejudiced It is a similar situation when a member is performing an advocacy role on behalf of a charity or lobby group. The Board proposes that these interests should *only* be considered traditionally 'prejudicial' for the purposes of the Code – requiring a member to withdraw before the meeting:

i where the matter has a direct impact on the body concerned (for example, a grant of money), or

ii. 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

137 The Board proposes that even in those situations members with public service interests or interests arising from membership of charity or lobby groups should be allowed to remain in the meeting to speak to the matter and answer questions, but withdraw before the debate and vote.

138. For example, where the member is on the board of a local charity and that charity is seeking planning permission for a new development, the member should be allowed to speak on behalf of the charity before withdrawing. Similarly, where the member has been involved in a campaign on behalf of their community, and may have even been elected on this basis, the member should be allowed to speak, even when the council is taking a decision directly affecting the aims of the campaign, before withdrawing.

139 All members with prejudicial interests – regardless of their category – will however continue to be subject to paragraph 12(c) and its requirement that members should not seek to improperly influence a decision about the matter

Registration of interests

Sensitive Information

Question

Q24 Should members employed in areas of sensitive employment need to declare their occupation in the public register of interests?

Consultation response

140 The consultation reflected a strong consensus on providing confidentiality for the employment details of members engaged in sensitive employment. 73% of consultees replied that members engaged in sensitive employment should not be required to declare their occupation in the public register. A significant proportion of the balance of respondents argued that the member's occupation should be declared, with the caveat the information should be provided to the monitoring officer

Recommendation

- **The Board recommends that the employment details of members engaged in sensitive employment only need be declared in a private register rather than the public register of interests.**

141. Sub-paragraphs 14(a) and (b) of the Code of Conduct currently 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 in these areas of work, threaten the safety of the member and their family.

142. Since the Code's implementation, the Board has, in the interest of members' safety, not referred for investigation complaints about members who have not entered their employment details in the register because of sensitive employment issues. These members have, on the Board's advice, provided this information in confidence to monitoring officers. This is a significant issue concerning members' employment and safety and monitoring officers require clarification of their responsibilities. It is therefore timely for this issue to be considered in the formal review of the Code. That members engaged in sensitive employment should not be

required to publicly register their employment details was one of the strongest and clearest responses in the consultation. A precedent for this provision is the confidentiality afforded to company directors under Section 723 A-F of the Companies Act 1985 which says that any Director who believes that publication of their address on a companies register of m4embers will put them at serious risk of violence or intimidation can apply to Companies House for an exemption.

143 It could anyway be argued that the Human Rights Act implies that such information should not have to be included in the register. To remove any doubt, we suggest that the Code makes the situation explicit.

144. The Board recommends that an exemption is included in paragraph 14 of the Code providing members engaged in sensitive employment an exemption from publicly registering information about their employment. Rather, this information would be provided to the monitoring officer, entered into a private register, not available to the public. In order to be afforded the confidentiality of this information provided by the exemption, members should be required to satisfy their authority's monitoring officer that they are engaged in sensitive employment.

Private Clubs and Organisations

Q25 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?

Consultation response

145. The proposal that members be required to register membership of private clubs and organisations was supported by 68% of respondents. Many respondents, whether local authorities or individuals felt that the term 'club' was insufficiently specific.

"Many 'clubs' are simply informal gatherings that attendees have given a name to and it is difficult to see how deciding whether such a group was a 'private club' would be any simpler than deciding whether it falls within the current paragraph 15(c) Is the Board suggesting that membership of simple "hobby" clubs should be registered" (New Forest District Council)

146. However, the analysis suggests that members should be required to register membership of private clubs and organisations.

147. Evidence was however far less conclusive regarding the second branch of the question – whether the requirement should be limited to organisations within or near the authorities area. The respondents who chose to further answer this question were a minority (41%) of respondents. 48% of these respondents agreed that the registration of clubs should be confined to the local area, whilst 52% argued that the requirement be without geographical restrictions. The University of Teesside recommended that, given that both sets of responses represents a minority of the actual responses, any decision based on analysis of the evidence should be approached cautiously.

Recommendation

- **The Government should review and clarify the scope of the information which members are required to register under paragraph 15(c).**

148 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). Since the Code of Conduct's implementation, the question of whether the Code should require members to register membership of specific private members' clubs has been widely debated. The Code'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.

149. Many members feel that there is a lack of clarity in the Code 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's registration requirements. In considering this issue, a balance needs to be struck between public accountability and confidence and the right to privacy. At the moment such interests are not registered but must be declared at appropriate times in meetings. One proposal considered by the Board, that they be registered after they have been declared would mean the interests are relevant to council business. This is the current approach to interests in Wales. However, this does not allow the public to know which members share common interests in advance.

150. The Board's guidance is that paragraph 15(c) of the Code may, in certain circumstances, require these interests to be registered. However, paragraph 15(c) has been open to differing interpretations. The Board recommend that Government should review and clarify the scope of the information which members are required to register under paragraph 15(c) to ensure that practice meets the Government's intentions.

Gifts and Hospitality

Questions

Q26. Should the Code require that the register of gifts and hospitality be made publicly available?

Q27. Should members also need to declare offers of gifts and hospitality that are declined?

Q28. 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?

Q29 Is £25 an appropriate threshold for the declaration of gifts and hospitality?

Consultation response

151 That the register of gifts and hospitality be made publicly available (Q26) was supported by 92% of respondents On the question whether members need declare offers of gifts and hospitality declined, 55% of respondents replied that declined gifts should be registered, while 45% thought this too onerous a burden on members. There was however significant support (85%) for the proposal that a series of gifts from the same source should be declared once they reach the £25 threshold

152 The analysis most clearly suggests therefore that the register of gifts and hospitality should be made publicly available and that the Code should not require the registration of gifts declined.

Recommendations

- **The Board propose that the threshold limit of £25 should be retained**

- **The Board recommend that the register of gifts and hospitality should be made public.**

153 Paragraph 17 of the Code of Conduct 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. To further the Code's endorsement of these principles, the Board proposes that it 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*. This would bring it in line with the register of interests. The Board also proposes that it should be an explicit requirement that members also declare the source(s) from which they have received gifts and hospitality as without such information the public register is of negligible use

154. A number of authorities have included in their local codes the extra provisions that members should be required to register gifts and hospitality offered but not accepted and that members should be required to register a series of gifts received from the same source which, valued together, would meet the threshold limit. However, support for the consultation's inclusion of these extra requirements was not so strong as to warrant their inclusion. The aim of the review is to simplify the Code wherever appropriate and the inclusion of extra registration requirements for gifts and hospitality would represent too onerous a burden on members for little gain in terms of public confidence and accountability.

155. 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 Board believed it relevant that the consultation ask whether the £25 limit is still appropriate. The consultation response strongly indicated that the £25 limit is still appropriate and the Board recommends that the limit does not need to be amended

ANNEX 1
The General Principles

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

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

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

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

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

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

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

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

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

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

ANNEX 2
Submissions on drafting

This annex identifies minor drafting issues which experience has highlighted may need amending. The paragraph references are to the version of the Code which applies to principal authorities operating executive arrangements.

Para 8(2)(a) – definition of relative
The present definition does not include a sibling of the member's spouse, although it does include the spouse of a member's sibling. Cousins are also omitted. The definition also requires revision in light of the provisions of the Civil Partnership Act 2004.

Para 9
Members are currently technically in breach of the Code even if they are genuinely unaware of an interest held by a distant relative. It may therefore be prudent to consider whether or not liability should be narrowed by introducing a new test e.g. " where the member knows or should reasonably have known about the interest"

Para 10 – definition of prejudicial interest
The current definition is close, but not identical, to the common law test for apparent bias. The Code's revision is a timely opportunity to reconsider this point. It is unclear whether the difference between the two tests serves any useful purpose.

Para 11 – Overview and scrutiny
No provision is made for the situation which arises where a member was a member of the decision-making body at the time of the decision but has since resigned. Logic suggests that a member in this position should be regarded as having a prejudicial interest.

Para 12 – Prejudicial Interests
The phrase interest of a financial nature in para 12(2) causes confusion because it is unclear whether it is limited solely to the interests of the member as registered in accordance with paragraph 14. We believe it should extend wider so as to catch the financial positions of a member's family, friends and related organisations. (the issue is explained at page 117 Case Review No 1 Volume 1)

Para 13 – Definition of meeting
Consideration should be given to whether the definition needs to be broadened or clarified. Thought needs to be given as to whether it should, for example, cover site visits on planning matters or public meetings as neither fall within the definition within the Code and therefore members with prejudicial interests are allowed to attend

Para 14 – Register of Financial Interests
The Electoral Commission has suggested that the register requirements might be amended and/or extended to reflect powers currently in the Political Parties Elections And Referendums Act 2000 (PPERA) which could then be repealed. The ODPM will wish to ensure that changes in the Code of Conduct reflect any changes in electoral legislation.

Para 15 – Register of "other" interests
The reference to "company" in paragraph 15c is unnecessary and conflicts with paragraph 14(d) which sets the level of share ownership that is required to trigger the need to register. ODPM have already accepted that the reference to company must be an error because it is correct then it means that a member is obliged to register an interest in a company in which one share is held.

Code for authorities not operating executive arrangements
There is no reference to the overview and scrutiny function in this Code.