

**COMMITTEE ON STANDARDS IN PUBLIC LIFE  
LOCAL AUTHORITY CODES OF CONDUCT  
IPF BETTER GOVERNANCE FORUM QUESTIONNAIRE**

**Q1. In what ways (if any) has the new ethical framework improved public confidence and trust in local authority elected representatives?**

A. There is no obvious evidence of an increase in public confidence.

There are two general areas of concern. Firstly, in the two years since the code of conduct has been operational across England, the majority of allegations made were either not referred for investigation or resulted in no further action or no evidence of a breach. There would appear to be a major perception gap between issues, which can be dealt with under the Code, and matters, which cause concern. Secondly the new regime appears to place emphasis on a limited number of negative factors rather the overall high standards which it could be argued the first two years of operation of the Code shows.

Members expressed concern that there was still a lack of public awareness of the Board and its work.

**Q2. In what ways (if any) has the new ethical framework acted as a disincentive to you being a member of a public body governed by it?**

*This is perhaps a question that members would be best placed to provide a response to on the evening.*

**Q3. Would the code be improved by incorporating within it the principles contained in the General Principles Order as in the Scottish code?**

There appears to be no obvious benefit.

**Q4. What clarification should be made regarding members' conflicts of interest on planning applications and similar such matters?**

A. At present a member may not have a personal or prejudicial interest in a planning application but may for other reasons be unable to sit on the determination of an application, for example, because of demonstrable bias or because they have fettered their discretion in some way.

Many authorities have produced supplemental planning guidance to deal with this situation. It is inevitable that guidance produced on such a basis will differ which moves away from the concept of a standard national code of conduct. National good practice could be pulled together to produce a Planning Code endorsed by the Standards Board.

**Q5. Does the code unreasonably restrict members with personal interests from representing constituent's views at committee?**

- A. A member with a personal interest can still speak and vote at a committee. It is only a member with a personal interest which is also a prejudicial interest who cannot do so. The recent case of Richardson and Orme v North Yorkshire County Council and Another has established the principle of "once a member always a member" so that a member with a personal prejudicial interest cannot justify their presence at a meeting by arguing they are there on behalf of the community they represent. This is an area, which it is often difficult for constituents of members to understand. They have an expectation that members will come forward to represent their views. Where a matter deals directly with a member who has a financial or business interest, participation will usually be inappropriate. Where a members interest arises from membership of a lobby group or similar body then as long as that is declared greater scope for participation may be beneficial.

**Q6. Should parish and town councils be part of the ethical standards legislation?**

- A. Parish and town councils play an important part in the planning process and are important statutory consultees on a range of other issues. *[Beyond this the views of members, particularly the parish members are welcomed.*

**Q7. In what ways (if any) could the mandatory code be simplified in respect of parish and town councils.**

*Suggestions from members including parish members are welcomed.*

**Q8. What (if anything) is achieved by applying some parts of the national code to members when acting other than in their official capacity, for example, No. 4 (bringing office into disrepute) and 5(a) (improperly securing advantage or disadvantage).**

- A. It is unlikely that the public perception will distinguish between someone who is known to be a councillor when they are acting in an official capacity or in their private life. Similarly, there can be no justification in a member improperly securing an advantage or disadvantage whether it is done as part of their formal business as a member or, whether they are acting "unofficially".

**Q9. What (if anything) is achieved by the obligation to inform the Standards Board if a reasonable belief is formed that a particular member has breached the code? (Paragraph 7)**

- A. This is a difficult area. From one perspective then, the obligation does ensure that matters are not swept under the carpet. However, it would be interesting to know how many complaints brought by members under this provision are dismissed without investigation as concern is sometimes expressed that a fear of a member being reported in turn for not reporting a "breach" leads to spurious complaints being brought to the attention of the Standards Board

which takes up resources at the expense of matters which really do need investigation. .

**Q10. How could Paragraph 7 be improved (if at all)?**

- A. A revision to perhaps encourage rather than require members to report breaches of the code without placing the absolute duty on them may be more beneficial.

**Q11. How can the distinction between personal and prejudicial interests be improved?**

- A. As things stand, a degree of judgement to the exercise in deciding whether or not an interest is personal at all, or it is personal or prejudicial.

It may be possible to insert some examples in the code. However, this is unlikely to be an exhaustive list. What is clear is that there is a body of decisions building up. It is unfortunate that, for example, the adjudication panel's website is not searchable by type of decision nor does it categorise matters by decision type, for example, failure to register an interest, failure to declare an interest, etc.

**Q12. Should the requirement to register some of the interests detailed in the register be replaced by a requirement merely to disclose them at a meeting where a discussion might affect them and if so which ones?**

- A. Where members are appointed by their authorities to stand on various bodies that is usually a matter of public record. Similarly, a member of a particular political party recording that on the register is probably unnecessary and adds nothing to the transparency of or effective operation of local government. The multiple declaring of interests at a council meeting can also be frustrating and time consuming. For example, on a policy framework document members will have disclosed interests potentially twice at Cabinet, scrutiny members will have disclosed their interest but again when the matter comes for adoption before council interests have to be declared again. I recall one meeting at our authority where the first ten to fifteen minutes of the meeting were spent by members declaring interests all of which had been declared at other meetings. This was an occasion when there was good public attendance and the feedback received was that those individuals present saw this as a rather silly layer of bureaucracy rather than adding to the transparency or enhancing the ethical operation of local government at Medway.

**Q.13 Should the nominal share values referred to in Paragraph 8(1)(c) and 13(d) – currently £5,000 and £20,000 – be made consistent and if so which should prevail?**

- A. They should be made consistent and the higher level should prevail.

**Q14. Could the definition of “a position of general control or management” in Paragraph 8(1)(d) and 14 be improved and if so how?**

A. It may be as well just to state the words “is employed or” before “holds a position of general control or management”.

**Q15. Should the definition of “relative” be improved and if so how?**

The definition of relative in the code is comprehensive. The deficiency is the failure to give a definition of or sufficiency of guidance on what constitutes a friend.

**Q16. Should the code make clear that the nature and extent of an interest should be declared for personal and prejudicial interests as well as merely personal ones as appears to be implied from Paragraph 9 in the code.**

A. It is not seen that there will be any particular benefit from this.

**Q17. Does the definition of “meeting” in Paragraph 12 need to be expanded to include all types of discussion including informal meetings with officers and/or members as is the case under the Scottish code?**

A. Members should be encouraged to advise officers and others that they have an interest in a matter. If the interest is a prejudicial interest then, possibly the code could make it clear that officers may be entitled to determine the meeting if they consider it inappropriate to proceed. A more formal system of disclosure and noting the disclosure may be administratively difficult and lead to more confusion and problems than the present system.

**Q18. Should the register of interests include:**

**(a) membership of all private clubs or societies, such as the Freemasons, a recreational club, working mens club, or private investment club as in the Welsh code;**

**(b) trade organisations in addition to the current professional associations and trade unions.**

(a) Many local authorities prior to the adoption of the code of conduct had a voluntary scheme of registration for such bodies and in some regards in England the adoption of the code led to less disclosure rather than more. It is debateable the extent to which some of bodies referred to in the question require registration in England in any event. It is not considered particularly burdensome or intrusive to clarify the code by requiring such registration.

(b) Registration would not cause a particular problem and such bodies may in some instances require registration as being bodies which are designed to influence public opinion.

**Q19. Do the requirements on registration of gifts and hospitality require amendment and if so how?**

- A. One possible change may be to encourage members to disclose details of hospitality offered but rejected. It may also be useful if the code gave some guidance on what a member should do once they had accepted hospitality, i.e. how it would effect their participation in decisions relating to the body who offered or granted the hospitality.

**Q20. Provide details of any other ways you think the code or the ethical framework generally could be improved**

- A. The code of conduct as it stands is a shell. It sets out general principles most of which are welcomed. However, in the two years since the code has been operating in excess of 2,000 complaints have been received and, there is an increasing body of decision making arising from Adjudication Panel hearings.

At present, this information is presented in an ad hoc way. The Standards Board's update bulletins are useful. However, the fact that the various sites reporting the outcomes of investigations are not searchable and do not categorise matters by type of breach makes it very difficult to distil key principles.

The code of conduct could usefully be supplemented by policy guidance notes on key issues e.g. from cases relating to non disclosed prejudicial or personal interests would assist members ensure they stay within the code and are not subject to complaints.

There also seems to be increasing confusion around the operation of Paragraph 10(2) of the code where it seems in some instances the Standards Board are taking a far more restrictive view than was indicated would be the case by the Office of the Deputy Prime Minister (ODPM) when the code was launched. This was on the basis that members should perhaps be able to declare more interests than previously but have greater ability to participate. Whereas the interpretation of the code particularly around members who are nominated by their authority to external bodies and, members who belong to pressure groups seems to be being applied more rigidly now than previously by the Standards Board.

The issue of the grant of dispensations has not to have been improved by the new regime. From practical experience a dispensation from the ODPM could previously be granted fairly quickly, sometimes even on the same day as a relevant meeting. Now, dispensations are granted by committee which are subject to the access to information rules. Also, there seems less flexibility to grant dispensations to individual members where the overall political balance or operation of the authority is not affected.

**Q21. Has your authority:**

- (a) granted its standards committee additional functions;**
- (b) indicated it is considering to do so.**

**If it has, what are they? If it has not, is there a reason?**

- A. (a) The committee as a part of its work programme is considering whether it is appropriate to undertake any additional functions. In the interim, it has been agreed that the committee will play a role in monitoring compliance with the CIPFA/SOLACE code of conduct which has recently been adopted by the council. It is also the lead body at Medway in monitoring compliance with the planning code of conduct.

**Q22. Please detail any examples of how the standards committee has performed its statutory duty re:**

- (a) training**
- (b) monitoring and compliance with the code**
- (c) promoting and maintaining high standards of member conduct**

- A (a) The committee has supported training to all members and parish councillors and clerks prior to the adoption of the code of conduct. Following the local government elections in May 2003 the independent members of the committee also supported training to new and existing members on the code of conduct. Members of political groups who are members of the committee act as advocates for standards issues within their groups.
- (b) The committee works with the monitoring officer to monitor compliance of the code of conduct within Medway.
- (c) The committee has a key role in reviewing the proposed changes and developments on standards issues, for example, at the request of the chair the committee asked to be formally involved in the preparation of this response. In addition, the committee has developed a planning code of conduct to assist members at Medway to maintain high standards in determining planning applications.