

the Case Review

the Code *Q&A*

number one volume one

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PREFACE TO THE SERIES The *Case Review* series shares with its readers The Standards Board for England’s experience of conducting investigations, giving legal advice and developing policy in relation to the Code of Conduct.

Each *Case Review* uses case examples drawn from that experience. These examples focus on new, problematic or interesting developments in the interpretation of the Code arising from investigation of those cases. The Ethical Standards Officers, together with The Standards Board for England’s legal and policy advisors, are consulted extensively when writing each *Case Review*.

Although the *Case Reviews* are not statutory guidance, The Standards Board for England regards them as practical advice kits on the interpretation of the Code, which offer useful guidance to members, monitoring officers and others.

The *Case Review* series also aims to reflect on, and inform about, new developments in the interpretation and working of the Code of Conduct

PREFACE TO THE CODE Q&A The first in the *Case Review* series takes the reader through every paragraph of the Code of Conduct and answers questions arising from each paragraph in turn. The questions asked are based on many of the real questions that monitoring officers and others have put to The Standards Board for England’s legal team and its advisors in the first year of the Code’s implementation.

As stated above, the *Code Q&A* is not statutory guidance. It is intended to address the practical problems that members and monitoring officers encounter when they have to make decisions about the Code of Conduct and its legal interpretation. The *Case Review: the Code Q&A* is intended to share our experience with you.

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

case examples: index

- page 23 *Case example 1* relates to the nature of unlawful discrimination as prescribed by paragraph 2(a) of the Code of Conduct.
- page 26 *Case example 2* deals with a member's behaviour towards council employees, and the sort of engagement and conduct that is acceptable in such circumstances.
- page 30 *Case example 3* relates to the question of when a member is acting in an official capacity. The focus is on the sort of private, 'off-duty' exchanges a member may have.
- page 37 *Case example 4* relates to the distinction between information 'given [...] in confidence' and information of 'a confidential nature'.
- page 39 *Case example 5* focuses on information given to a member, and the understanding between the giver of the information and the member.
- page 57 *Case example 6* deals with a member's attempts improperly to gain political advantage for himself over an opposing political group's member while she was on maternity leave.
- page 70 *Case example 7* revolves around a member's responsibility for reporting suspected breaches of the Code of Conduct.
- page 80 *Case example 8* relates to the question of what is a 'friend'. In this case it was alleged that a member failed to disclose a personal interest in a planning application considered at a council meeting.
- page 83 *Case example 9* deals with a situation where there was clear animosity between a member and a candidate for co-option to a council, to the extent that a prejudicial interest arose.
- page 102 *Case example 10* considers the proper approach to paragraph 10(2) of the Code.
- page 114 *Case example 11* makes clear that a member must withdraw from the room or chamber when a matter in which he or she has a prejudicial interest is discussed.

The Code Q&A

EDITORIAL INTRODUCTION

The Oxford English Dictionary defines a ‘code’ as a system of rules or regulations on any subject. The Code of Conduct is a rule-based system that provides a framework of ethical behaviour for members of local authorities.

The Code asks questions about what sort of ethics in local democracy we should aspire to and was written to promote the best standards of such behaviour. Like every other system of rules, abstract principles have to be interpreted in the here-and-now of everyday experience. This is particularly true of the Code of Conduct, because it applies to real people doing real jobs in their communities.

This guide draws on the experience of The Standards Board for England’s legal team. The Standards Board for England’s legal team provides Ethical Standards Officers and monitoring officers with expert legal advice. This is particularly true when Ethical Standards Officers are called on to apply the Code in the light of the real situations that come before them. Wherever possible, real cases are used as examples to illustrate how the Code has been interpreted in practice.

There are five different Model Codes, each one applicable to the different types of relevant authority listed in the *Local Government Act 2000*. However, the bulk of the provisions in each Code are identical. The version of the Code reproduced here is the one that applies to principal authorities operating executive arrangements (as set out in Schedule 1 to the *Local Authorities (Model Code of Conduct) (England) Order 2001*); where there are significant differences between the different Model Codes these are highlighted in the text. The term ‘Code’ is used generically to apply to all five Model

Codes of Conduct issued under section 50 of the *Local Government Act 2000*. Some local authorities chose to amend the Model Code of Conduct and add provisions when they adopted it. This guide cannot cover all such amendments. However, a monitoring officer should bear in mind any local amendments or additions to the Code of Conduct when he or she considers cases arising in his or her own authority.

To reiterate, the Code is broadly drafted. This is quite deliberate. It is intended to be a guide to the conduct expected of members, not a prescriptive document that will tell members how to behave in each and every situation. For this reason much of what follows is intended to alert monitoring officers, and others who have responsibility for advising members, as to the kinds of questions that they ought to ask when approaching the Code of Conduct. This document does not – and is not intended to – provide the answers for all case scenarios. It outlines The Standards Board for England’s approach to the Code and highlights particular difficulties of interpretation. The results of completed investigations are used to illustrate how such problems have been dealt with.

However, a certain amount of caution needs to be exercised in relation to ‘case-law’ and the Code. Ethical conduct, and how we judge whether conduct is ethical or not, is not an absolutist exercise. Judging whether someone has behaved ethically depends on careful examination of specific circumstances. Where there is room for doubt, members, and those advising them, should always strive to adhere to the spirit of the Code: the promotion of the highest standards of conduct among those who hold public office.

OVERVIEW

Tony Holland, *Chair*

...the administration of the law can never go lax where every individual sees to it that it grows not lax in his own case, or in cases which fall under his eyes. Mark Twain's Notebook

Mark Twain had a point. Even in the unlikely event of a perfect piece of legislation existing, the law is best not left to its own devices. All statutes are subject to interpretation. The law's meaning is discovered and developed through experience and consideration.

The *Local Government Act 2000*, which lays out the framework for the Code of Conduct, is not a perfect piece of legislation. But the thinking behind it is sound. The *Local Government Act 2000* is based on the belief that openness and transparency matter to local democracy and that local democracy is itself important. The *Local Government Act 2000* aims to provide a mechanism to enable Ethical Standards Officers to investigate if someone believes a local authority member has behaved badly or wrongly.

The *Local Government Act 2000* is based on the belief that openness and transparency matter to local democracy and that local democracy is itself important.

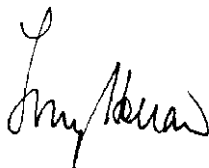
But again, the thinking and the purpose of the *Local Government Act 2000* are wider than simple investigation and censure. By having a mechanism of statutory investigation – rather than an ad hoc system of hearsay and rumour – the reputations of the vast majority of local authority members, who selflessly serve their communities, are protected. In this way, we hope to rebuild the public's confidence in local democracy.

We have always said that we intend to use a light touch but never to be a soft touch. I believe that this series will help demonstrate how this common sense approach can be achieved.

What is more, the Code of Conduct provides criteria that help the individual member to adhere to the highest standards of behaviour.

This guide is the first in a series. While this issue presents a sensible interpretation of the legislation itself, future issues will focus on cases that have been brought before us, together with their investigation and determination. In this way, we hope to build up a body of knowledge that will assist authorities' monitoring officers, and others, in making the Code work.

We have always said that we intend to use a light touch but never to be a soft touch. I believe that this series will help demonstrate how this common sense approach can be achieved. As ever, I actively seek and welcome your comments. This is, after all, a partnership. We are all, very much, in it together, whether it is our own individual case or the cases that fall before our eyes. *6 June 2003*



A handwritten signature in black ink, appearing to read 'Tony Blair', is positioned above a horizontal line that ends in an arrowhead pointing to the right.

Code of Conduct

paragraph 1

1 . 1 A member must observe the authority’s code of conduct whenever he –

- a* conducts the business of the authority;
- b* conducts the business of the office to which he has been elected or appointed; or
- c* acts as a representative of the authority,

and references to a member’s official capacity shall be construed accordingly.

1 . 2 An authority’s code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.

1 . 3 Where a member acts as a representative of the authority –

- a* on another relevant authority, he must, when acting for that other authority, comply with that other authority’s code of conduct; or
- b* on any other body, he must, when acting for that other body, comply with the authority’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

1 . 4 In this code, “member” includes a co-opted member of an authority.

Q&A paragraph 1

Q1 *Who does the Code of Conduct apply to?*

The Code applies to all members and co-opted members of relevant authorities. An exhaustive list of relevant authorities can be found at section 49(6) of the *Local Government Act 2000*.

Q2 *Who is a co-opted member?*

A co-opted member is defined by section 49(7) of the *Local Government Act 2000* as any person who is not a member of an authority but who is a voting member of a committee or sub-committee of that authority. This includes ‘independent’ members of Standards Committees (see question 3).

Section 13 of the *Local Government and Housing Act 1989* establishes the general principle that members of committees appointed under section 102 of the *Local Government Act 1972*, or sections 2 and 4 of the *Local Authority Social Services Act 1970*, who are not members of the local authority do not generally have any voting rights. However, there are a number of exceptions to this general rule. Church and parent governor members of education overview and scrutiny committees have voting rights, as do all members of advisory committees appointed under section 102(4) of the *Local Government Act 1972*. Such persons therefore fall within the definition of a co-opted member.

Independent remuneration panels established under Regulation 4 of the *Local Authorities (Members’ Allowances) (England) Regulations 2001 (SI 2001/1280)* are not considered to be committees or sub-committees of the authority that establishes them. Accordingly, members of an independent remuneration panel fall outside the definition of a co-opted member.

Q&A paragraph 1

Q3 *Who are independent members of Standards Committees?*

The term ‘independent member’ of a Standards Committee is used as shorthand for those members who are appointed under section 53(4)(b) of the *Local Government Act 2000*. All Standards Committees must include at least one member who is not a member or officer of any relevant authority. The Standards Board for England recommends that Standards Committees should appoint more than one independent member. Additional restrictions are imposed by Regulation 4 of the *Relevant Authorities (Standards Committee) Regulations 2001 (SI 2001/2812)*.

However, the term ‘independent member’ has another meaning and is used to refer to politically independent elected members. The two meanings of independent member can become confused, especially where there is an independent political group. Some relevant authorities also comprise appointed as well as elected members of local authorities. For example, police authorities have independent members who are not elected but appointed through a local selection process. ‘Lay-member’ of a Standards Committee is an alternative description for those members appointed under section 53(4)(b) of the *Local Government Act 2000*. This description makes a clear distinction between these lay-members and members who are independent in other senses.

Q4 *When does the Code apply?*

Most of the Code’s provisions only apply to activities ‘undertaken [...] in an official capacity’. The two provisions that apply in all circumstances are paragraphs 4 and 5(a) and they are discussed in greater detail below.

The meaning of ‘official capacity’ is important when applying the Code. Paragraph 1(1) of the Code defines ‘official capacity’ by

Q&A paragraph 1

reference to three sets of circumstances. A member is acting in an official capacity when he or she is:

- a* conducting the business of the authority;
- b* conducting the business of the office to which he or she is elected or appointed; or
- c* acting as a representative of the authority.

The Code does not give any further guidance as to what these terms mean.

There are circumstances where it is clear that the Code operates. These include any meetings of the authority, its executive or any of its committees or sub-committees. Participation in such meetings plainly involves conducting the business of the authority. When an elected member exercises powers delegated to him or her as a member of the authority's executive or holds a surgery for residents of his or her ward, the member is obviously conducting the business of the office to which he or she is elected. Members' direct dealings with officers in relation to the business of the authority will almost always constitute 'conduct[ing] the business of the [member's] office'. Similarly, where members of police or fire authorities attend formal meetings with police or fire officers, or conduct formal visits to police or fire stations, they will be conducting the business of their office.

The third circumstance in which a member can act in an 'official capacity' (acting as a representative of the authority) is potentially very wide in scope. The Standards Board for England's opinion is that it will cover situations where a member is appointed or nominated by their authority to another body (for example a board of directors or trustees). Members will need to distinguish between occasions where they are invited to a meeting or function as an individual and those where they are invited because of their position

Q&A paragraph 1

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

Q5 Do private discussions about authority business come under 'official capacity'?

Paragraph 1

The Standards Board for England is likely to view any private discussion of authority business, either with members or with the authority's officers, as conducting the business of the member's office. Members should not assume that private discussions of authority business do not come within the scope of a member's official capacity. Only where there is very clear evidence that the conversation was not concerned with conducting authority business will it fall outside paragraph 1(1)(b) of the Code.

Q6 Could the Code apply when the member is abroad?

Yes. It is quite possible that the member could be acting as a representative of the authority on an official visit abroad. Furthermore, paragraphs 4 and 5(a) of the Code potentially apply to a member's conduct in any circumstances (even a holiday abroad, but see the discussion of these paragraphs below).

Q7 When does the Code cease to apply?

The Code of Conduct ceases to apply when members cease to hold office, either by resignation, disqualification or by the expiry of their term of office. A member suspended from holding office in his or her authority by a case tribunal under section 79(4)(a) of the *Local Government Act 2000*, or by a Standards Committee in accordance with

Q&A paragraph 1

Regulations issued under section 66 of the *Local Government Act 2000*, will be unable to take part in the formal business of the authority during the period of suspension. However, The Standards Board for England anticipates that a suspended member will be able to continue with ward business, such as representations from ward residents. It will therefore still be possible for a suspended member to act, in these limited circumstances, in ‘an official capacity’.

The principle that paragraphs 4 and 5(a) of the Code can apply in circumstances beyond the member’s official capacity is still relevant for suspended members. It is entirely possible that a member could be found to have breached paragraphs 4 and 5(a) during a period of suspension.

Q8 *Could a conflict ever arise for a member between his or her duty to comply with the Code of Conduct and his or her lawful obligations to a body on which he or she serves as a representative of the authority?*

In the view of The Standards Board for England this provision will not apply very often. Members who represent their authority on other bodies (other than relevant authorities) are expected to comply with the general obligations contained in Part I of the Code. However, the detailed provisions relating to the declaration of interests at authority meetings (paragraphs 9(1) and 12(1)(a) of the Code) do not apply when members attend meetings of the bodies on which they serve. These bodies are likely to have their own rules in relation to such matters.

Similarly members are not required to fill out a separate register of interests form for bodies to which they have been appointed (unless the body is a ‘relevant authority’ as defined in section 49(6) of the *Local Government Act 2000*).

Q&A paragraph 1

However, where a member has a prejudicial interest in relation to a matter being considered by another body, he or she is still bound by the obligation under paragraph 12(1)(c) of the Code not to ‘seek improperly to influence a decision about that matter’.

Paragraph 1(3)(b) is relevant where the Code’s provisions conflict with the legal obligations of company directors or the trustees of charitable trusts. For discussion of the term ‘as a representative’, please see question 63.

Code of Conduct

paragraph 2

2 . A member must –

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

Q&A paragraph 2

Q9 *What is unlawful discrimination?*

The term ‘discrimination’ covers a spectrum of behaviour that can be characterised as unfair or unreasonable. It is essential to understand that paragraph 2(a) only relates to those forms of discrimination that are unlawful under the Sex, Race and Disability Discrimination Acts and the *Human Rights Act 1998*. There are three main types of unlawful discrimination, namely, direct discrimination, indirect discrimination and victimisation (see case example 1).

Direct discrimination occurs when someone is treated less favourably on the grounds of his or her race, sex or disability. For example, if a woman was not called for an interview for a chief executive post despite the fact that she fulfilled the person specification better than any of the men short-listed, it is likely that direct discrimination occurred.

Indirect discrimination may occur where a requirement or condition has a disadvantageous and disproportionate impact on members of particular groups that are defined by race, sex or disability. Consider a situation where members decide that all applicants for council employment must be 6ft tall. This requirement would have a disproportionate impact on women and members of many racial groups. It would also be unjustified.

Victimisation has a special legal meaning in discrimination law. It occurs if a person is treated less favourably because they have complained about unlawful discrimination or supported someone else who has. Victimisation would occur where a member sought to undermine the employment prospects of an officer who supported somebody who made an allegation of discrimination against the member.

paragraph 2

Case example 1 relates to the nature of unlawful discrimination as prescribed by paragraph 2(a) of the Code of Conduct.

The complainant alleged that a member made discriminatory comments against less well-off members of the community at a planning meeting, referring to such persons as down-and-outs or troublemakers.

The member was found not to have discriminated unlawfully in his comments, as unlawful discrimination is based on race, gender or disability. The Ethical Standards Officer held that the member was entitled to take a view on the housing proposal and that the expression of sincerely held differences of opinion within councils is a necessary part of the democratic decision-making process. Whether or not the member's views were factually correct, their airing in the meeting did not, in the opinion of the Ethical Standards Officer, constitute a breach of the Code of Conduct.

Q&A paragraph 2

Unlawful discrimination only applies to certain types of relationships between the alleged discriminator and the victim. Generally the alleged discriminator must be an actual or prospective:

- employer;
- training provider;
- housing provider;
- education provider; or
- provider of goods, facilities and services to the public.

However, it should be noted that the *Race Relations (Amendment) Act 2000* expressly covers all the functions of a public authority.

Unlawful discrimination is generally concerned with people's actions and the effects of their actions, not their opinions or beliefs. Therefore unlawful discrimination is normally only an issue when a member has participated in an act or decision. For example, paragraph 2(a) might apply if a member was suspected of discriminating against a candidate on the grounds of gender, race or disability when involved in the appointment of senior officers.

Members are free to express opinions and beliefs. However, the law qualifies freedom of expression and members are still required to think before they speak or otherwise express themselves. Members must have regard to the duty contained in the *Race Relations (Amendment) Act 2000* to promote racial equality when they express their views.

Members must also bear in mind their obligation to 'treat others with respect'.

Verbal abuse and harassment can amount to unlawful discrimination when directed at an individual. For example, a member who has a habit of shouting sexual abuse at an individual in committee meetings is in danger of unlawfully discriminating against that person.

Q&A paragraph 2

A member is at risk of unlawfully discriminating if he or she promotes a course of action that might result in unlawful discrimination. The Commission for Racial Equality brought a case against a member who put forward and spoke in favour of a resolution calling on an authority to stop recruiting Asian people. The court found that the member acted unlawfully by trying to induce the council to adopt a discriminatory policy.

Members should also think about presentation and content when they express views, beliefs and proposals in newsletters and other media. A chief constable was found to have acted unlawfully when he distributed a newsletter encouraging readers to report every gypsy seen in the neighbourhood as a potential criminal.

The Discrimination Acts are framed in such a way that a member's authority is likely to be vicariously liable for the member's discriminatory acts. The offending member(s) will also be treated as aiding the discriminatory act that occurred. In this situation, the victim will have a right of civil action against both the authority and the member.

There is no specific legislation currently dealing with discrimination on the grounds of religion, sexual orientation or age, but such discrimination may amount to indirect discrimination and contravene article 14 of the *European Convention on Human Rights*. The *EC Equal Treatment General Framework Directive 2000/78* prohibits discrimination in employment and training on grounds of sexual orientation, religion, disability and age. In relation to discrimination on the grounds of sexual orientation and religion the deadline for implementation is 2 December 2003. In relation to discrimination on the grounds of disability and age the deadline for implementation is 2 December 2006.

paragraph 2

Case example 2 deals with a member's behaviour towards council employees, and the sort of engagement and conduct that is acceptable in such circumstances. The Ethical Standards Officer emphasised the need for a member to view his or her behaviour objectively.

In case example 2, the complainant alleged that a member failed to treat Housing Benefits Department employees with respect and acted in such a manner that could reasonably be regarded as bringing his office or authority into disrepute.

A member accompanied some of his constituents to the council's Housing Benefits Department in order to help them with their housing benefits claim. The complainant alleged that the member's manner was loud and demanding. The complainant claimed that the member interrupted an officer's conversation and spoke about the Department in a disrespectful way, making negative comments on its level of customer service.

The Ethical Standards Officer considered that the member was loud, demanded immediate attention, interrupted discussions in the office and spoke in a disparaging way about the Department. The Ethical Standards Officer found that the member's behaviour

paragraph 2

could reasonably be regarded as overbearing, rude and intimidating. The Ethical Standards Officer accepted that the member did not intend his behaviour to be perceived in this way. However, the Ethical Standards Officer considers that the requirement to treat others with respect should be viewed objectively, taking into account how the behaviour would reasonably be perceived, as well as the intention of the member concerned. The Ethical Standards Officer concluded that the member failed to treat the council officers with respect, in breach of paragraph 2(b) of the Code of Conduct.

The Ethical Standards Officer considered that the member's behaviour in the council offices was clear to those present, including some people who were not council employees. The Ethical Standards Officer found that the member's behaviour fell short of the standards expected of those who hold public office. The Ethical Standards Officer concluded that the member's conduct could reasonably be regarded as bringing his office or authority into disrepute, in breach of paragraph 4 of the Code of Conduct (see questions 20-26).

Q&A paragraph 2

Q10 *What does the Code mean by 'treat others with respect'?*

Although the interpretation of unlawful discrimination under paragraph 2(a) of the Code is relatively narrow in scope, this is counter-balanced by the extremely broad terms in which paragraph 2(b) is drafted. Failure to treat others with respect could cover almost any example of unfair, unreasonable or demeaning behaviour directed by one person against another.

Bullying is an important example of the type of behaviour that could fall within the scope of paragraph 2(b). The Standards Board for England's view is that bullying of officers and other members is a serious issue. The Standards Board for England and the Ethical Standards Officers are very keen to do everything they can to stamp it out.

Another significant area of concern is the way in which members treat the public. Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration (see case example 2).

Q11 *What kinds of conduct are not covered by 2(b)?*

The apparent breadth of paragraph 2(b) has led to misunderstanding on the part of some members and officers. Paragraph 2(b) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion, and the defence of those opinions, through members' arguments and public debate are an essential part of the cut-and-thrust of politics.

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

Q&A paragraph 2

be able to publicly express disagreement with each other. A rule-of-thumb is expressed in this comparison: ‘You’re talking drive!’ is likely to be an acceptable expression of disagreement; calling someone a ‘bloody bitch’, on the other hand, is far more likely to constitute a failure to comply with paragraph 2(b). On reflection we can see that the first comment is aimed at the articulation of an idea or argument. The second is aimed at the person and their personal characteristics.

Whilst The Standards Board for England and the Ethical Standards Officers are determined to take a firm line on bullying of officers, this does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in the criticism of the way in which an officer or officers handled particular matters. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time. It is only where members’ conduct is unfair, unreasonable or demeaning that paragraph 2(b) will be relevant.

Paragraph 2(b) only applies to activities undertaken in an official capacity. Paragraph 2(b) will not apply to a member’s private life. It is not intended to police conversations at the pub or altercations over the garden fence (see case example 3).

Paragraph 2

Q12 What sort of behaviour would ‘compromise the impartiality of those who work for, or on behalf of, the authority’?

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

paragraph 2

Case example 3 relates to the question of when a member is acting in an official capacity. The focus is on the sort of private, ‘off-duty’ exchanges a member may have.

The complainant alleged that the member spoke to him in a rude and abusive manner in breach of paragraphs 2(b) and 4 of the Code of Conduct.

A discussion took place between the complainant and the member about the removal of hedge clippings and the existence of a pathway between a hedge on the complainant’s property and some allotments.

In relation to paragraph 2(b) of the Code of Conduct, the Ethical Standards Officer considered whether or not the member was acting in an official capacity when the comments were made. This is because, apart from paragraphs 4 and 5(a), the Code of Conduct only applies when a member is acting in an official capacity. The Ethical Standards Officer considered that this was a private conversation that had taken place on a Sunday evening, and, in fact, the complainant was not aware of the member’s identity until after the event. The Ethical Standards Officer concluded that the member was not acting in an official capacity and therefore could not have breached paragraph 2(b) of the Code of Conduct.

paragraph 2

Paragraph 4 (which prohibits conduct that could reasonably be regarded as bringing a member's office or authority into disrepute) applies whether a member is acting in an official capacity or not. Although the Ethical Standards Officer considered that the member's comments were inappropriate and unhelpful, he did not consider them serious enough to constitute a breach of paragraph 4 of the Code of Conduct. The Ethical Standards Officer formed this view in relation to the circumstances in which the conversation took place, such as the private nature of the conversation and the fact there were no other people present.

Q&A paragraph 2

Officers will take a firm line against any conduct that undermines the principle of political neutrality, which all officers operate under. The only exception to this neutrality is political group assistants appointed under section 9 of the *Local Government and Housing Act 1989*. Attempts to undermine officers' neutrality will often be closely related to bullying.

Paragraph 2(c) may cover the whole range of activities carried out by the authority: examples include the preparation of committee reports, particularly in a controversial area such as planning control; the allocation of council housing; or the appointment of staff. Local authority constitutions drawn up under section 37 of the *Local Government Act 2000* must contain protocols for managing member-officer relations (in accordance with the requirements of the *Local Government Act 2000 (Constitutions)(England) Direction 2000*). Members who fail to comply with such protocols may be found to have compromised the impartiality of officers.

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

- Q13 Who is covered by the phrase 'work [...] on behalf of [...] the authority'?*
Clearly this term covers those who work for the authority, such as council officers. The inclusion of the phrase 'or on behalf of' indicates that members must be just as vigilant in relation to contractors or consultants who are working for the authority on a short-term basis or the employees of organisations that are involved in the delivery of local authority services. Members should not improperly seek to influence the way in which such persons carry out their duties.

Code of Conduct

paragraph 3

3 . A member must not –

- a* disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor
- b* prevent another person from gaining access to information to which that person is entitled by law.

Q&A paragraph 3

Q14 *What is information?*

‘Information’ is a very broad term. It includes facts, advice and opinions in both written and unwritten form.

Q15 *When is information ‘given [...] in confidence’?*

The everyday meaning of ‘information given [...] in confidence’ is ‘information given in the expectation that it will not be disclosed to anyone else’. To decide whether information has been given in confidence, members need to consider the circumstances in which the information was given to them and the expectations of the person who gave them the information. As case example 5 shows, however, members are not expected to be clairvoyants. The person giving the information needs to make sure that the member is aware that the information is being given ‘in confidence’.

Q16 *What is information ‘of a confidential nature’?*

Information ‘of a confidential nature’ is information that, for whatever reason, is not suitable for disclosure outside a particular group or organisation. This phrase covers situations where a member becomes aware of information accidentally or through a third party. If the member believes the information is confidential he or she must not disclose it.

The limits of this provision need to be recognised. Information is not confidential solely because the originator or the person concerned would prefer the information to be kept out of the public domain. This part of the Code only applies where disclosure would genuinely harm the public interest or cause serious harm to individuals. It is quite possible that information that is ‘given [...] in confidence’ may not be ‘of a confidential nature’ (see case example 4).

Information ‘of a confidential nature’ goes beyond the very narrow definition of ‘confidential information’ given in section

paragraph 3

Case example 4 relates to the distinction between information ‘given [...] in confidence’ and information of ‘a confidential nature’.

In case example 4, the Ethical Standards Officer decided that the disclosure of a note of a political group meeting was not a failure to comply with the Code because the note was not information ‘of a confidential nature’ within the meaning of paragraph 3(a) of the Code of Conduct.

In this case the complainant alleged that a member passed to the press and others a copy of a confidential note of a political group meeting.

Although the Ethical Standards Officer considered that the member disclosed information publicly, no evidence of a breach of the Code was found. This is because the information contained in the document concerned was not considered to be confidential for the purposes of the Code of Conduct.

The purpose of the document passed on was to advise the political group’s members of what had been discussed at the group meeting, how the party proposed to deal with items on the agenda and what stance members were being asked to support. It did not contain information that councillors were required by law or by the council to keep confidential. The information disclosed dealt with matters that were going to be discussed in public at a council meeting and that were already in the public domain.

Q&A paragraph 3

100A(3) of the *Local Government Act 1972*. Information falling under the term ‘of a confidential nature’ will normally include the kind of matters set out in Schedule 12A of the *Local Government Act 1972*. Examples include matters of commercial sensitivity, personal information about an individual’s employment or financial situation, law enforcement matters, security issues, or information that attracts legal professional privilege. Internal discussions between members and officers may also be confidential, for example, if they concern emerging council policy. Existing case-law in relation to duties of confidence may assist in the interpretation of paragraph 3.

Paragraph 3

Q17 *Who is ‘authorised to give’ consent to the disclosure of confidential information?*

The person who originally provided the information ‘given in confidence’ will normally be authorised to consent to its disclosure. However, this prerogative may be overridden if there is a conflict between the disclosure of information and the intrinsically ‘confidential nature’ of the information. This is the case even if the disclosure is agreed by the person who originally provided the information. Where information is ‘given [...] in confidence’ but is also genuinely confidential in nature, an objective assessment of interests is called for. It may not be sufficient for the person who originally provided the information to the member to consent to its wider disclosure. Only a person who is in a position to balance any competing interests involved will be ‘authorised to give’ consent to the disclosure of information ‘of a confidential nature’. The identity of this person will vary widely according to the nature of the information concerned (see case example 5).

paragraph 3

Case example 5 focuses on information given to a member, and the understanding between the giver of the information and the member. In this case the giver considered that she had passed on the information in confidence. However, the information was not ‘of a confidential nature’ per se.

The complainant alleged that a member gave a copy of a confidential report regarding a local school’s closure to another member, without the complainant’s consent as an author of that report.

The complainant had prepared a report into the school’s closure and associated issues and met with the member and another member to discuss issues surrounding the report. The member took the report home to consider and later informed the complainant that he had provided a copy of the report to the Chair of the Education Advisory Panel.

Although the complainant said that she had not given permission for the member to provide anyone else with a copy of the report, she acknowledged that it was not marked as ‘confidential’ or ‘draft’. She also confirmed that she provided copies of the report with only minor amendments to all the authority’s members the following week.

The Ethical Standards Officer considered that the member was acting in an official capacity when he met with the complainant, received a copy of her report and passed it on to the Chair of the Education Advisory Panel. The Ethical Standards Officer found no evidence that the member had acted improperly.

Q&A paragraph 3

Q18 *When will a person be 'required by law' to disclose information?*

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

However, there are many other circumstances where members may find themselves required by law to disclose information. Section 62 of the *Local Government Act 2000* empowers Ethical Standards Officers to require any person to give them any information or explanations that are necessary in relation to their investigations. It is a criminal offence not to comply with such a requirement.

Paragraph 3

Q19 *What types of information are persons entitled 'by law' to access?*

The circumstances where paragraph 3(b) may apply are too wide to list exhaustively here. The 'Access to Meetings and Documents' provisions contained in Part VA of the *Local Government Act 1972* will be relevant to members of principal local authorities. Parish councillors will need to consider the provisions of the *Public Bodies (Admission to Meetings) Act 1960*. These statutory provisions legally entitle members of the public access to certain information. In addition, section 81(6) of the *Local Government Act 2000* requires the register of interests, which monitoring officers establish under section 81(1) of the *Local Government Act 2000*, to be available for public inspection at all reasonable hours. If a member attempted to prevent access to information covered by these provisions, that member would fail to comply with paragraph 3(b) of the Code.

Q&A paragraph 3

Members also need to respect the right of access to personal data under section 7 of the *Data Protection Act 1998*.

From 2005, paragraph 3(b) of the Code will also encompass individual rights of access under the *Freedom of Information Act 2000*. Requests made directly to members of authorities are likely to be treated as requests made to the authority itself. Paragraph 3(b) means that members will be accountable for their handling of these requests.

Code of Conduct

paragraph 4

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

Q&A paragraph 4

Q20 *What kinds of conduct will be covered by paragraph 4?*

The first and most obvious thing to say about paragraph 4 is that, along with paragraph 5(a), it covers members' activities undertaken outside of their 'official capacity'. This is clear both from the wording of paragraph 1(2) and the use of the words 'any other circumstance'.

The point has already been made that the Code is deliberately broadly drafted and does not attempt to list exhaustively all types of conduct that fall below the standards expected of members of relevant authorities.

This characteristic of the Code is nowhere more evident than in paragraph 4. The Standards Board for England sees paragraph 4 as a reminder to members that their conduct is subject to greater scrutiny than that which applies to other individuals, and that this is true in relation to both their official duties and other activities. Members must always remember that their actions may have an adverse impact on their office or the authority on which they serve.

Paragraph 4

Q21 *What is disrepute?*

The Oxford English Dictionary defines disrepute as 'a lack of good reputation or respectability; discredit'. Anything which diminishes public confidence in either a member's office or their authority, or which harms the reputation of an authority, will bring that office or authority into disrepute.

Q22 *What is the significance of the words 'could reasonably be regarded'?*

The Ethical Standards Officer does not need to prove that a member's actions have diminished public confidence or harmed the reputation of an authority in order to show a failure to comply with paragraph 4. The test is whether or not a member's conduct 'could reasonably be

Q&A paragraph 4

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

Q23 *Will criminal conduct always come within the scope of paragraph 4?*

Not necessarily. Circumstances will arise where members are convicted of criminal offences. Some serious criminal activity will obviously bring a member's office and authority into disrepute. Section 80 of the *Local Government Act 1972* already provides for the automatic disqualification of a member if convicted of an offence and sentenced to more than three months in prison.

However, less serious criminal offences are likely to attract a sentence of imprisonment of less than three months. Furthermore, in some cases, matters that could potentially constitute a criminal offence will not be prosecuted. In many circumstances, these matters will be likely to bring the authority into disrepute. But this may not always be the case.

The Relevant Authorities (General Principles) Order 2001 (SI 2001/1401) sets out the principles that govern the conduct of relevant authorities' members. Principle 2 provides that 'members should not place themselves in situations where their honesty and integrity may be questioned' and Principle 8 provides that 'members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them'. Any offence that breaches these Principles, such as an offence involving dishonesty or a clear and deliberate flouting of the law, will be likely to bring the member's office and/or authority into disrepute.

Q&A paragraph 4

Q24 Does paragraph 4 solely relate to criminal conduct?

No. Paragraph 4 does not relate solely to criminal matters. It is quite possible, for instance, that activity which brings the honesty and integrity of a member into question will not constitute any criminal offence. However, it would still be reasonable to regard such behaviour, which is dishonest and lacking in integrity, as bringing the member's authority into disrepute. Dishonesty in relation to official duties will clearly be a cause of particular concern. However, paragraph 4 of the Code may be invoked if a member acts dishonestly or with duplicity, whether or not the activity relates to the member's official duties.

Paragraph 4

Q25 Will breach of an authority's protocols (for example protocols for managing officer-member relations or a planning protocol) come within the scope of paragraph 4?

Each case will be decided on its own facts. In more serious cases it is possible that breach of a protocol could come within the scope of paragraph 4. For example, a member who deliberately ignores the requirements of a planning protocol might reasonably be regarded as bringing an authority's planning procedures, and the authority itself, into disrepute

Q26 Can activity that was intended to be purely private bring an authority into disrepute?

This will depend on the circumstances. In the case of serious criminal conduct, the fact that the conduct took place in private will not prevent paragraph 4 from coming into play. There are other situations where paragraph 4 may cover purely private conduct. A private conversation may reveal an improper or dishonest approach to a member's public duties. For example, a member may be overheard in a pub discussing ways of ensuring the 'right' outcome on a friend's planning

Q&A paragraph 4

application or ensuring that a relative is awarded a lucrative contract. The fact that the conversation was intended to be private will not rule out the possibility that the member could reasonably be regarded as bringing his or her authority into disrepute.

On the other hand The Standards Board for England and the Ethical Standards Officers are bound to uphold Article 8 of the *European Convention on Human Rights*. Article 8 states that:

- i* ‘Everyone has the right to respect for his private and family life, his home and his correspondence’; and
- ii* ‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’.

Article 8 protects a member’s private life. The Standards Board for England and the Ethical Standards Officers are acutely aware that paragraph 4 should not be treated as a licence to intrude unnecessarily into a member’s private life. For example, there are aspects of lifestyle and personal morality that it would be inappropriate for The Standards Board for England to intrude upon. Paragraph 4 will not apply if a member’s conduct cannot be reasonably viewed as having any bearing on the member’s performance of his or her public duty.

Code of Conduct

paragraph 5

5 . A member –

- a* must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and
- b* must, when using or authorising the use by others of the resources of the authority –
 - i* act in accordance with the authority's requirements; and
 - ii* ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.

Q&A paragraph 5

Q27 *What kinds of conduct would be improper?*

There are circumstances where it will be perfectly proper for a member to seek to confer an advantage or disadvantage and those circumstances where such conduct will be improper. For example, there can be no objection to a member voicing his or her opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that the member's attempts to secure this advantage are clearly part and parcel of his or her duties as a local representative. Such activities are clearly not improper.

The term 'improperly' is not defined in the Code. Again, this ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that members are elected or appointed to public office in order to serve the public interest. There is clearly room for disagreement as to where the public interest in a particular set of circumstances lies. A member's conduct would be improper if he or she were to use their public position in order to further the private interests, either of themselves or friends, or in order to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly or unreasonably uses a member's public position in order to promote private interests over the public interest will be 'improper'.

As already noted, paragraph 5(a) applies in any circumstances. It is never acceptable for members to use their public position to further purely private interests. See case example 6 for a situation where a member improperly used his position to further his own political interests.

Q&A paragraph 5

Q28 Does a member actually have to confer or secure an advantage or disadvantage?

No. A member will fail to comply with paragraph 5(a) if he or she has used his or her position *for the purpose* of conferring or securing an advantage or disadvantage. The fact that the attempt may have been unsuccessful does not put the matter outside the scope of paragraph 5(a).

Q29 What are the 'resources of the authority'?

The 'resources of the authority' include services and facilities beyond the financial resources of the authority. Resources could include any land or premises, as well as any equipment, including computers, and materials. The time, skills and assistance of anybody employed by the authority, or working for, it also count as resources.

Paragraph 5

Q30 How will members know what the authority's requirements for the use of resources are?

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

- use of authority premises;
- member-officer relationships;
- information technology (such as computer equipment and the use of associated software), including the use of such equipment at home;
- telephone and fax;

Q&A paragraph 5

- photocopying;
- use of stationery and headed notepaper;
- postage;
- use of authority transport; and
- allowances and expenses.

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

The Standards Board for England's Policy and Guidance team is considering issuing examples of good practice in this area.

Paragraph 5

Q31 *What constitutes political purposes?*

Paragraph 5(b)(ii) of the Code complements section 2 of the *Local Government Act 1986*, which prevents the publication of material 'designed to affect public support for a political party'. It also supplements the government's Code of Recommended Practice on Local Authority Publicity (issued under section 4 of the *Local Government Act 1986*). Importantly the Code goes considerably further than either section 2 of the *Local Government Act 1986* or the Code of Recommended Practice. The use of resources for political purposes covers not only the publication of campaigning material but also any other activity that is intended to promote purely party political interests. The context in which a member acts will obviously be important in relation to this part of the Code. When elections are pending members will need to be particularly scrupulous about the use of authority resources.

paragraph 5

Case example 6 deals with a member's attempts improperly to gain political advantage for himself over an opposing political group's member while she was on maternity leave.

The member wrote a newsletter article suggesting that constituents could contact him with their problems while the female member was on maternity leave. The two members' wards were due to be merged and the female member complained that the article was an improper use of the other member's position, aimed at acquiring political advantage. The female member had stated in an earlier letter to a local newspaper that she was still actively engaged in work for the authority and that arrangements had been made to support her during her maternity leave, although she had been unable to attend evening meetings since the birth of her child.

The Ethical Standards Officer found that the member had improperly used his position to secure an electoral advantage for himself, in breach of paragraph 5(a) of the Code of Conduct, by promoting his name and his availability to constituents while the female member was on maternity leave.

The Ethical Standards Officer also found that the member breached paragraphs 2(b) and 4 of the Code of Conduct.

Q&A paragraph 5

Q32 *What kinds of activities 'facilitate' or are 'conducive to the [...] discharge' of an authority's functions or a member's office?*

Paragraph 5(b)(ii) acknowledges that party politics does have a proper role to play, both in the conduct of authority business and in the way that members carry out their duties. It is acceptable for political groups to hold meetings in authority premises. Often it is not practicable to separate a member's political campaigning from the discharge of their functions as an elected ward member, such as holding surgeries and dealing with correspondence from constituents. However, members and monitoring officers will need to exercise considerable vigilance to ensure that this provision is not abused.

Code of Conduct

paragraph 6

6 . 1 A member must when reaching decisions –

- a* have regard to any relevant advice provided to him by –
 - i* the authority’s chief finance officer acting in pursuance of his duties under section 114 of the Local Government Finance Act 1988; and
 - ii* the authority’s monitoring officer acting in pursuance of his duties under section 5(2) of the Local Government and Housing Act 1989; and
- b* give the reasons for those decisions in accordance with the authority’s and any statutory requirements in relation to the taking of an executive decision.

6 . 2 In sub-paragraph (1)(b) above and in paragraph 9(2) below, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Variations between Codes of Conduct

Paragraph 6 is not included in the Model Code of Conduct for parish councils because parish councils do not have a Chief Finance Officer or monitoring officer. For similar reasons there is no reference to the Chief Finance Officer in the Model Code of Conduct that applies to the National Park and Broads Authorities, even though these authorities do have monitoring officers. For obvious reasons paragraphs 6(1)(b) and 6(2) only appear in the Model Code of Conduct that applies to authorities operating executive arrangements.

Q&A paragraph 6

Q33 *Why are only the chief finance officer and monitoring officer mentioned in paragraph 6(1)(a)?*

Unlike other authority officers, the chief finance officer and monitoring officer have specific statutory duties. Under section 114 of the *Local Government Finance Act 1998*, a chief finance officer is obliged to produce a report if it appears to him or her that the authority, any committee or sub-committee of the authority, or a person employed by the authority or a joint committee, has made or is about to make a decision that involves the authority incurring any unlawful expenditure, or taking action that would be unlawful and likely to cause the authority a loss or deficiency or to enter an unlawful item of account. Under section 5 of the *Local Government and Housing Act 1989*, a monitoring officer is obliged to prepare a report where it appears to him or her that any proposal, decision or omission by the authority, by any committee or sub-committee of the authority, or any employee or any joint committee, has, or is likely to, contravene the law. The monitoring officer also has a duty to prepare a report following a Local Government Ombudsman's investigation if he or she is persuaded that there has been an instance of maladministration or injustice within the authority. Under these sections, a chief finance officer's or monitoring officer's report is sent to all members of the authority. Where a monitoring officer prepares a report about the actions of a committee or sub-committee, the report must be sent to all the members of that committee and considered within 21 days.

The Model Code for local authorities operating executive arrangements makes no mention of the chief finance officer's and monitoring officer's parallel duties in relation to proposals, actions, omissions and decisions of the authority's executive under section

Q&A paragraph 6

114A of the *Local Government Finance Act 1988* and section 5A of the *Local Government and Housing Act 1989*.

Q34 Does the advice given by a chief finance officer or monitoring officer have to be followed?

Members are under no obligation to follow advice offered by a chief finance officer or monitoring officer. However, a member *is* required to have *regard* to such advice. If a member discounts the advice of principal officers without lawful reason, this disregard is likely to constitute a failure to comply with the Code (cf *Lloyd v McMahon* [1987] 1 All ER 1118 per Dillon LJ at 1139 and per Woolf LJ at 1151). The Standards Board for England anticipates that if an authority or committee were proven to have disregarded such a report without lawful reason, the Ethical Standards Officer would be likely to find that all members involved in the decision to disregard the report failed to comply with paragraph 6(1)(a) of the Code.

It is not possible to give an exhaustive list of reasons that might be considered lawful if members choose not to follow the advice that a chief finance officer or monitoring officer gives to them as part of their statutory obligations. There may be circumstances where there is legitimate room for doubt as to the correctness of the monitoring officer or chief finance officer's view. This could occur where the state of the law is genuinely unclear. Members who choose to ignore such advice from principal officers need to be in a position to defend their actions, setting out the grounds on which they chose not to follow officers' advice.

Q&A paragraph 6

Q35 *What are the statutory requirements in relation to giving reasons for executive decisions?*

Regulations 3 and 4 of the *Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (SI 2000/3272)* specify that all decisions taken by members of the executive are ‘prescribed decisions’ for the purposes of section 22(4) and (5) of the *Local Government Act 2000*. Reasons must be recorded for all such decisions. The following judicial pronouncement is a useful guide to the proper approach to the duty to give reasons:

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

Members of the executive, either individually or collectively, are likely to fail to comply with paragraph 6(1)(b) of the Code of Conduct if they fail to give proper, adequate and intelligible reasons for a decision.

Code of Conduct

paragraph 7

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

Q&A paragraph 7

Q36 What constitutes reasonable belief?

A member must reasonably believe that somebody has failed to comply with the Code for paragraph 7 to apply. Members should not make allegations based on unfounded gossip or mere speculation. Indeed, the making of allegations against another member without proper foundation might, in extreme cases, constitute a failure to comply with paragraph 4 of the Code ('bringing his office or authority into disrepute'). A belief is reasonable if what the member knows could persuade a reasonable, objective observer that a member has failed to comply with the Code. Paragraph 7 does not require absolute certainty on the part of the member. A member should notify The Standards Board for England if he or she reasonably believe another member has failed to comply with the Code.

Q37 What about members who close their eyes to the obvious?

Paragraph 7 is most likely to apply where a member was aware of serious misconduct and did nothing about it. A member's response may be that he or she was genuinely unsure as to whether or not somebody failed to comply with the Code. In such a case, the circumstances will need to be examined from the point of view of a reasonable and objective observer. Was there any reasonable basis for doubt as to whether or not the misconduct was taking place? If the answer is no, the member will have failed to comply with paragraph 7.

Q&A paragraph 7

Q38 Are members required to notify The Standards Board for England in circumstances where they are aware that The Standards Board for England has already been informed of the situation?

Paragraph 7 does not explicitly provide for circumstances where a member believes that there has been a failure to comply with the Code, but also knows that somebody has already made a written allegation to The Standards Board for England about the conduct. Of course, a member should notify The Standards Board for England if he or she is in any doubt as to whether or not a written allegation has been made about a suspected breach of the Code of Conduct. However, it is clear that where somebody has already made an allegation to The Standards Board for England, another allegation would serve no useful purpose. Any allegation of a failure to comply with paragraph 7 in such circumstances is unlikely to be referred for investigation (see case example 7).

paragraph 7



Case example 7 revolves around a member's responsibility for reporting suspected breaches of the Code of Conduct. The Ethical Standards Officer's conclusion gives us two significant points in relation to this responsibility. First, it considers the position where a member reasonably believes that somebody else is pursuing the matter. Second, the duty to report a suspected failure to comply with the Code is the same for all members, as the Code applies equally to all members. In this case, there was no greater onus on a member to report a suspected failure to comply with the Code because he was the leader of the suspected member's political group.

In case example 7, two members alleged that another member was aware of a suspected breach of the Code of Conduct and failed to report it. The two members claimed that this member should have reported the suspected breach, as he was leader of the member's political group. The political group leader counter-claimed, stating that the two members were equally aware of the suspected breach and yet they had not reported it. This member also

paragraph 7

maintained that he did not report the suspected breach because he was aware that the parish clerk was in contact with The Standards Board for England about the matter.

The Ethical Standards Officer considered that the Code of Conduct places a duty on members to report any conduct by a member they reasonably believe breaches the Code. However, the Ethical Standards Officer also considered that there is no greater obligation for leaders of political groups to do so. The Code applies equally to all members.

The Ethical Standards Officer concluded that the political group leader reasonably believed that the parish clerk was pursuing the suspected breach and so found no evidence of any significant failure to comply with the Code of Conduct. The Ethical Standards Officer also concluded that the other two members did not delay unduly in making their written allegation.

Q&A paragraph 7

Q39 Does the duty under paragraph 7 extend to the conduct of members of other relevant authorities?

The duty extends only to a member's knowledge of conduct by members of his or her own authority. This means that a member is not obliged to make an allegation if he or she believes a member of *another* authority may have failed to comply with the Code of Conduct. The Standards Board for England accepts that there may be circumstances where such disclosure would be inappropriate (for example where members are involved in national bodies that provide advice and support to other members). However, The Standards Board for England considers that in general members should disclose details of *all* conduct that they are aware of and that they believe fails to comply with the Code, unless there is a genuine and substantial reason not to do so.

Code of Conduct

paragraph 8

8 . 1 A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority’s area, the well-being or financial position of himself, a relative or a friend or –

- a* any employment or business carried on by such persons;
- b* any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- c* any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- d* any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.

8 . 2 In this paragraph –

- a* “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
- b* “partner” in sub-paragraph (2)(a) above means a member of a couple who live together.

Q&A paragraph 8

Q40 What kinds of interests are covered by paragraph 8?

The definition of a personal interest under paragraph 8 is deliberately very broadly drafted. A personal interest can arise not only from the employment, business interests and shareholdings of the member concerned but also from the employment, business interests and shareholdings of his or her relatives or friends. The scope of paragraph 8 is much wider than the list of interests that must be registered under paragraphs 14 and 15 of the Code. This is to enable a relatively wide range of personal interests to be declared in authority meetings without unnecessarily limiting participation. The wide scope here reflects the policy of promoting transparency in local government that lies at the heart of the Code's drafting. The much more restrictive definition of prejudicial interests under paragraph 10(1) ensures that members are not unnecessarily excluded from decision-making. Please see the opposite page for examples of the kinds of interests that are 'personal interests' within the meaning of paragraph 8.

Paragraph 8

Q41 What is the position where a member is ignorant of a personal interest?

One consequence of the very broad drafting of paragraph 8 is that members may not be aware of all their personal interests. Clearly a member cannot be expected to declare something of which he or she is unaware. It would be highly impractical to expect members to conduct research into the employment, business interests and other activities of all their friends and relatives. However, members are likely to be found to have failed to comply with the Code if they ignore the existence of interests of which, from the point of view of a reasonable and objective observer, they should have been aware.

paragraph 8

Examples of personal interests

- a A member has a niece. The niece has recently moved in with her boyfriend who is employed by a local building firm. The firm puts in a bid for work from the authority. The member will have a personal (but not necessarily a prejudicial) interest.*
- b A member has an old friend whom she has known since schooldays. They live thirty miles from each other but meet for lunch two or three times a year. The member's friend has a substantial shareholding (nominal value £20,000) in a business that has been built up by her family for many years, although the friend plays no part in running the business. The business is likely to be affected by major redevelopment proposals. The member will have a personal interest (but may be ignorant of its existence, see question 41); the interest will not necessarily be prejudicial.*
- c A member has grandchildren who regularly use the authority's school bus service. The member will have a personal interest (but not necessarily a prejudicial interest) in relation to any discussion of the school bus service.*
- d A member has an uncle whom he has not met for ten years. The uncle's wife is on the Board of Governors of a local school. The member will have a personal interest (but not necessarily a prejudicial interest) in matters affecting the school's financial position.*

Q&A paragraph 8

Q42 *When will a matter relate to a registered interest?*

Another example of the very broad drafting of paragraph 8 is the use of the phrase ‘relates to’. A personal interest will arise wherever a matter ‘relates to’ one of the interests registered under Part 3 of the Code. There will be a personal interest wherever a matter affects, or could reasonably be expected to affect, the persons, organisations or places listed in the member’s register of interests. The Standards Board for England considers that a matter can relate to an organisation either where it directly affects the organisation or where the organisation has publicly expressed a view on the matter. There are important limits to the scope of this provision, however. The matter must relate to the organisation concerned. A member of Friends of the Earth does not have a personal interest in all issues that affect other members of Friends of the Earth, and the same principle applies to political organisations. Particular caution needs to be exercised in relation to political parties. Although The Standards Board for England’s view is that membership of political parties should be registered under Part 3 of the Code it would be absurd, given the transparently central role that political parties play in local government, for members to declare a personal interest in every matter on which their political party had expressed a view. This is clearly not the intention of paragraph 8.

Paragraph 8

Q43 *What is intended by the ‘greater extent than other [...] inhabitants’ wording?*

No personal interest will arise where a matter affects the member *to the same extent* as other council tax payers, ratepayers or inhabitants of the authority’s area. So members will not have a personal interest in the setting of the level of council tax or other measures that apply equally across the whole of the authority’s area. However, members still need to consider all the relevant factors. If the matter only affects

Q&A paragraph 8

one particular part of an authority (for example a small town in a large rural district) or a particular group within the authority (for example all parents with school-age children) a personal interest will still arise (but see discussion in question 60 about interests shared with a large number of other people).

Q44 *What is wellbeing?*

The use of the term ‘wellbeing’ is a good example of the very broad drafting of paragraph 8. ‘Wellbeing’ can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position. The range of personal interests is, accordingly, likely to be very broad.

Although not explicitly stated, it seems unlikely that the term ‘wellbeing’ in paragraph 8 was intended to apply to companies, corporate bodies or organisations of the kind listed in paragraph 15 of the Code.

Paragraph 8

Q45 *What is a friend?*

Again those responsible for drafting the Code deliberately used a very broad term, not qualified by a precise definition. A friend can be defined as someone well known to another and regarded with liking, affection and loyalty by that person. A closer relationship is implied here rather than mere acquaintance. Such friendship will be established by the actual relationship existing between two people. Mutual membership of an organisation (such as a local charity, service association, lobbying group, political party or even a political group on the authority) is unlikely to be sufficient on its own to establish the existence of a friendship between two people (see case example 8 and the questions to ask when considering if a friendship exists).

paragraph 8

Case example 8 relates to the question of what is a ‘friend’. In this case it was alleged that a member failed to disclose a personal interest in a planning application considered at a council meeting.

The member and one of the applicants were both members of a community association. The complainant claimed that they had both served on the association for the last ten years. According to the current treasurer of the association, the member and the applicant organised functions and benefits for the community every few months and seemed on friendly terms. However, the treasurer also noted that the member and the applicant did not seem to socialise outside of village events.

The member had lived in the village for forty years and had been an active member of up to ten groups or associations. She said that although she knows a lot of people through such activities, she does not actively socialise with them all.

The applicants sent a letter to The Standards Board of England that stated that the member ‘is not, and has never been, a personal friend of ours’. The applicants also stated that the only relationship they have with the member is through the community association.

The complainant withdrew the allegation following the issue of the Ethical Standards Officer’s draft report. The complainant took this action on the grounds that the definition of ‘friend’ as set out in the Ethical Standards Officer’s report was not one they had used in making the original allegation. The withdrawal did not affect the Ethical Standards Officer’s findings.

The Ethical Standards Officer considered that there was a long-standing relationship between the member and

paragraph 8

the applicants through their common involvement in the community association. However, evidence from a number of people suggested that their relationship was solely based on their connection with the community association and was not a personal friendship.

The Ethical Standards Officer concluded that the member and the applicants were acquaintances but not friends. The Ethical Standards Officer found no evidence that they were friends within the meaning of paragraph 8 of the Code of Conduct and therefore the member did not breach paragraph 9 of the Code of Conduct.

Members and monitoring officers might wish to consider the following questions when considering if a friendship exists.

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

These questions should never be taken in isolation.

It is the cumulative evidence of a close relationship that will establish a friendship. A certain amount of caution should also be exercised. Most members know each other and will often attend the same functions because of their positions in the community. A level of relationship above and beyond that which usually exists between colleagues and political associates will be required to establish the existence of a friendship.

Q&A paragraph 8

Q46 What about enemies?

Circumstances will arise where there is clear personal hostility or resentment between two people (for example, after an acrimonious divorce or where one person has been involved in the termination of another person's employment). Where such hostility or resentment exists between a member and someone affected by an issue before the authority it seems likely that a personal interest will arise. Paragraph 8 does not appear to have been drafted with this situation in mind but The Standards Board for England's view is that in these circumstances a member's 'wellbeing' will be affected (see case example 9).

Q47 What is meant by 'employment or business'?

'Employment or business' covers any activity that generates income for the member. It will not cover unearned income (from property or investments) unless the person concerned plays an active role in the management of those assets.

Paragraph 8

Q48 What is meant by a 'corporate body'?

The term 'corporate body' includes companies, building societies, industrial and provident societies, public corporations such as the British Broadcasting Corporation or the Port of London Authority and insurance companies.

Q49 What is meant by a 'class of securities'?

The term 'securities' includes any instrument (such as a share, bond or option) that indicates some form of ownership rights or creditor relationship with a particular body. In practice the most commonly encountered form of securities are shares.

paragraph 8

Case example 9 deals with a situation where there was clear animosity between a member and a candidate for co-option to a council. The Ethical Standards Officer concluded that the level of hostility was significant enough to establish a prejudicial interest.

In case example 9, a member and her husband were in the final stages of an acrimonious divorce. The husband put himself forward as a candidate for co-option to the council. His estranged wife was present at the meeting in which the council voted for an election rather than co-option, even though her estranged husband was the only candidate and there were two vacant places. She proposed the resolution for an election. She also attended the meeting at which her estranged husband lost the vote for co-option.

The Ethical Standards Officer considered that the breakdown of the relationship between the member and her estranged husband was such that a member of the public, with knowledge of the facts, would reasonably regard it as so significant as to be likely to prejudice the member's judgement of the public interest. The Ethical Standards Officer concluded that the member did have a prejudicial interest in the consideration of her estranged husband's co-option and that she should have withdrawn from the meetings that dealt with this matter.

Q&A paragraph 8

Q50 What is meant by the term 'beneficial interest'?

A beneficial interest is one where the owner of the interest is entitled to the benefit of the asset concerned. Such an interest can arise directly through the legal ownership of an asset or indirectly where the member concerned is the beneficiary of a trust. The use of the term 'beneficial interest' excludes those who hold assets under a trust but are not beneficiaries of that trust. In such situations the trustee holds the legal title to the assets in question but has no beneficial interest.

Q51 What is the 'nominal value'?

The nominal value will be the face value of the shares, as shown on the share certificate, or other security (as opposed to its market value).

Q52 What constitutes 'a couple who live together'?

The wording of paragraph 8(2)(b), which defines a partner, seems to be directed towards couples living together in a sexual relationship, whether that relationship is same-sex or heterosexual. It seems unlikely that friends sharing living accommodation but not in a sexual relationship would be included in the definition of 'partner'. The point may be significant in some circumstances given that the Code defines 'relative' as including the 'partner' of any relative.

Q&A paragraph 8

Q53 Are 'in-laws' included within the definition of a relative?

Parents-in-law are expressly included within the definition. So are most other 'in-law' relationships because they are covered by the term 'spouse or partner of any of the preceding persons'. Sons and daughters-in-law are covered by this term, as are brothers and sisters-in-law who are married to a member's siblings.

The only difficulty arises in relation to the brothers and sisters of a member's spouse. These are not expressly included within the definition and do not come within the category of spouse or partner of a relative. An interest will only arise where such persons are considered to be among the member's friends. Clearly this will not necessarily be the case.

Code of Conduct

paragraph 9

- 9 . 1 A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.**

- 9 . 2 Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.**

Variations between different versions of the Code of Conduct

For obvious reasons paragraph 9(2) only appears in the version of the Code that applies to authorities operating executive arrangements.

Q&A paragraph 9

Q54 At what stage of a meeting should a member disclose a personal interest?

The Code is quite clear on this point. A member should declare the existence and nature of a personal interest at the commencement of the consideration or as soon as it becomes apparent that the matter in which they have an interest is to be, or is being, discussed. The Standards Board for England is aware that many authorities deal with declarations of interest by an agenda item at the start of the meeting. Although there is a slight inconsistency between this approach and that set out in the Code, The Standards Board for England does not consider that this will generally be of any practical significance: there is no substantial conflict between authorities continuing to have a ‘declaration of interests’ agenda item and the Code of Conduct. However if members are in any doubt about their position the best advice is to follow the procedure laid down in the Code of Conduct.

Q55 When does consideration of a matter commence at a meeting?

Consideration of a matter commences once the relevant item on the agenda is reached. Consideration will include the hearing of any evidence, representations or submissions from officers, interested parties or members of the public. Consideration is not limited to discussions between members about the merits of a particular decision.

Q56 Is a written declaration of an interest sufficient?

A written declaration of an interest arising at a meeting is not acceptable by itself. The Code’s requirements regarding personal and prejudicial interests, and the declaration of those interests, aim to support an open and transparent system of local democracy. A member’s interests should be open to members of the public and the press.

Q&A paragraph 9

Therefore a verbal declaration is required at any meeting where a matter arises in which a member has an interest.

Q57 How should authorities deal with situations where a large number of members need to declare interests of the same type?

Where a large number of members have interests of the same type it is sensible to make arrangements to avoid spending a great deal of time on each member making declarations (this situation may arise, for instance, in a large metropolitan authority where many members serve as school governors). One way around this problem is to prepare a list of personal interests prior to the meeting. Copies of this list should be made available to the press and public at the meeting and all members would be expected to confirm that they had read the list and agreed its contents so far as they related to their own interests. This might be achieved by a show of hands. Responsibility for the declaration of interests must be seen to rest with members rather than officers. However, this course is recommended only where individual declarations of interests would lead to severe disruption of business.

Paragraph 9

Q58 How much detail is required in the declaration?

Members should give only such information as is necessary to identify the existence and nature of the interest. For example, a declaration is sufficient that states, ‘This application relates to land that borders property owned by a friend of mine’.

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

Code of Conduct

paragraph 10

10 . 1 Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

10 . 2 A member may regard himself as not having a prejudicial interest in a matter if that matter relates to –

- a* another relevant authority of which he is a member;
- b* another public authority in which he holds a position of general control or management;
- c* a body to which he has been appointed or nominated by the authority as its representative;
- d* the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
- e* the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
- f* the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and

Code of Conduct

paragraph 10 continued

- 10 . 2 g the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

Variations between different versions of the Code of Conduct

Paragraphs 10(2)(d) and (e) do not appear in the versions of the Code of Conduct which apply to parish councils, police authorities, the Broads Authority or National Park authorities because these authorities do not have responsibility for housing or education. In paragraph 10(2)(e) of the version of the Code which applies to police authorities (the equivalent of paragraph 10(2)(g) above) reference is made to certain allowances available under the *Police Act 1996*. Incidentally, although both the police authority and the parish council versions of the Code retain the reference to allowances under section 18 of the *Local Government and Housing Act 1989*, this section does not actually apply to those authorities (see section 18(5) of the *Local Government and Housing Act 1989*). The version of the Code applying to the Broads Authority and the National Parks authorities has two additional sub-paragraphs within paragraph 10(2). Paragraph 10(2)(f) of that Code deals with interests arising from farming or land in the area of the authority; paragraph 10(2)(g) refers to charges under the *Norfolk and Suffolk Broads Act 1988* and matters relating to navigation within the area of the Broads Authority. Both sub-paragraphs underline the fact that interests will not be prejudicial unless they relate particularly to employment, business or land of the member concerned or one of their friends or relatives.

Q&A paragraph 10

Q59 Does a prejudicial interest mean that a member also has a personal interest and vice versa?

There is a simple chain of reasoning to follow here. A prejudicial interest *must always be a personal interest*. You cannot have a prejudicial interest unless a personal interest has first been established.

However, a personal interest is not necessarily a prejudicial interest. As the phrase suggests, the Code requires a more stringent test to determine that an interest is prejudicial as well as personal.

Q60 How does a member judge if his or her interest is prejudicial?

The member needs to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation and, in particular, how the circumstances are likely to impact on the member's judgement of the public interest. Care needs to be taken in relation to this topic. The judgement must be a reasonable one and an interest will only be prejudicial if it can reasonably be regarded as significant. Almost any degree of personal involvement or knowledge of the circumstances is likely to affect a member's judgement. A member may well have been elected precisely because of his or her local knowledge. For an interest to be prejudicial it must be 'likely to prejudice' the member's judgement. In other words the interest must be likely to harm or impair the member's ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that will positively harm the member's ability to judge the public interest objectively.

Q&A paragraph 10

Some general principles must be borne in mind when applying this test. Members should clearly act in the public interest and not in the interests of family or friends. Members are custodians of the public purse and their behaviour and decisions should reflect this responsibility.

A special mention should be made of situations where a member shares a personal interest with a large number of other people (for example, where a particular part of an authority's area will be affected by a decision). The Standards Board for England considers that if a member shares a personal interest with a large number of people, it is less likely that a prejudicial interest will exist. An interest shared by a member with thousands of other people living in the same town is much less likely to prejudice the member's judgement than an interest that only affects the member concerned (or only affects a small number of people). However, each case must be decided on its own facts.

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

The declaration of interests also ensures that local authority business is legally sound. If a member fails to declare an interest, or fails to leave the room or chamber where a matter concerning a prejudicial interest is discussed, then any decision made at that meeting could itself be challenged on grounds of bias. The prejudicial interest test at paragraph 10(1) of the Code is very close to the common law test for bias as most recently defined in *In Re Medicaments and Related Classes of Goods No. 2* [2001] 1 WLR 727.

paragraph 10

In considering whether a member of the public with knowledge of the relevant facts would reasonably regard an interest as so significant that it would be likely to prejudice the member's judgement of the public interest, it may help to apply the **SOAP** test.

SELFLESSNESS – *Could any and every possible decision the member made in connection with the matter be regarded as selfless?*

OBJECTIVITY – *Could the member be regarded as being as objective in the matter as his or her fellow members?*

ACCOUNTABILITY – *Could the member's involvement in the matter stand up to public scrutiny?*

PUBLIC INTEREST – *Would the public interest be harmed by the member's involvement?*

Q&A paragraph 10

Q61 *What situations are covered by paragraph 10(2) of the Code?*

It is wrong to regard paragraph 10(2) as exempting members from the consideration of whether or not they have a prejudicial interest. A member *may* regard himself or herself as not having a prejudicial interest under the circumstances set out in sub-paragraphs 10(2)(a) to (g). But it may not always be appropriate to do so. Members will need to consider the specific facts in each individual case. There may be additional factors present over and above those listed at 10(2)(a) to (g) that will indicate the existence of a prejudicial interest (see case example 9).

The Standards Board for England appreciates that this is a difficult area of the Code both for members and those advising them. We plan to issue further guidance on this issue explaining how paragraph 10(2) applies in commonly encountered situations.

paragraph 10

Case example 10 considers the proper approach to paragraph 10(2) of the Code.

In this case, the complainant alleged that a member failed to declare a prejudicial interest in a matter discussed at a council meeting. The alleged interest was the member's position as the council representative on an association of local authorities. The member had assumed that a prejudicial interest did not apply under paragraph 10(2)(c) of the Code of Conduct, which allows that a member may regard himself or herself as not having a prejudicial interest if the matter relates to 'a body to which he has been appointed or nominated by the authority as its representative'.

In regard to paragraph 10(2)(c) of the Code of Conduct, the Ethical Standards Officer considered this paragraph to be qualified by the phrase 'may regard'. The Ethical Standards Officer considered that 'may regard' means that the qualifications under paragraph 10(2) of the Code of Conduct are not absolute and automatic, and that the member should take into account all circumstances before determining whether he or she has a prejudicial interest or not.

paragraph 10

The Ethical Standards Officer considered that the member in this case should have taken this course of action before determining whether he could or could not take part in the discussions relating to the association.

However, the Ethical Standards Officer found no evidence of any additional factors that would have made it inappropriate for the member to take advantage of the exemption offered under paragraph 10(2)(c) of the Code of Conduct. In these circumstances, the Ethical Standards Officer found no breach of the Code of Conduct in respect of any matters relating to the declaration of prejudicial interests and the requirement to withdraw from any meeting relating to that interest.

Q&A paragraph 10

Q62 What is a public authority?

The term ‘public authority’ is not defined (unlike the term ‘relevant authority’ which is defined at section 49(6) of the *Local Government Act 2000*). The Standards Board for England’s view is that the term ‘public authority’ should be broadly construed. Some assistance may be obtained by reference to the list of public authorities in Schedule 1 to the *Freedom of Information Act 2000*. The Standards Board for England considers that authorities listed in this Schedule would qualify as public authorities for the purposes of the Model Code of Conduct.

Q63 When are members appointed or nominated to a body by their authority ‘as its representative’?

The Standards Board for England does not adopt a technical approach to the phrase ‘as its representative’. Members appointed to bodies often have legal obligations to that body. These obligations may in turn override any obligations to the authority that nominated or appointed them. For example, a member who is appointed as a company director will have legal obligations to act in the best interests of that company and its shareholders. It would be unlawful for the member to use his or her position simply to represent the interests of the authority that appointed him or her. However, we do not consider that in such circumstances the appointment or nomination falls outside the scope of paragraph 10(2)(c). The words ‘as its representative’ are used broadly and will cover most circumstances where an authority is invited to nominate or appoint one of its members to a particular position.

Code of Conduct

paragraph 11

11 . 1 For the purposes of this Part, a member must if he is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –

a committees or sub-committees; or

b joint committees or joint sub-committees,

of which he may also be a member.

11 . 2 But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

Variations between different versions of the Code Paragraph 11 only appears in the version of the Code that applies to authorities operating executive arrangements. The fact that authorities operating alternative arrangements are also required to establish an overview and scrutiny function appears to have been overlooked. The Standards Board for England recommends that members of authorities operating alternative arrangements ought to follow the guidelines set out in paragraph 11.

Q&A paragraph 11

Q64 What is the purpose of paragraph 11?

Paragraph 11 protects the integrity of overview and scrutiny committees. Members of overview and scrutiny committees should be different from those members who originally took the decision under scrutiny, or who are members of the decision-making committee. Such members can appear before the overview and scrutiny committee to answer questions or give evidence about the decision or action under consideration but should play no part in the overview and scrutiny committee's deliberations.

Code of Conduct

paragraph 12

12 . 1 Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –

- a* withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority’s standards committee;
- b* not exercise executive functions in relation to that matter; and
- c* not seek improperly to influence a decision about that matter.

12 . 2 A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority’s –

- a* overview and scrutiny committees; and
- b* joint or area committees,
to the extent that such committees are not exercising functions of the authority or its executive.

Variations between different versions of the Code

Paragraphs 12(1)(b) and 12(2) only appear in the version of the Code that applies to authorities operating executive arrangements. As with paragraph 11, the fact that authorities operating alternative arrangements are also required to establish an overview and scrutiny function (and may have joint or area committees) appears to have been overlooked. The Standards Board for England’s view is that members of authorities operating alternative arrangements ought to follow the guidelines set out in paragraph 12(2).

Q&A paragraph 12

Q65 Should a member declare the existence and nature of a personal interest, which is also prejudicial, before withdrawing?

Yes. All prejudicial interests are also personal interests. A declaration under paragraph 9 should be made and minuted prior to the withdrawal required under paragraph 12.

Q66 Can a member declare a prejudicial interest, withdraw from the meeting and remain in the room where the meeting is being held?

No. A member *must* withdraw from the room even if he or she has declared an interest and takes no further part in the discussion. The Code's intent here is that a member's presence alone can influence a decision or discussion. For example, it is *not* acceptable for a member simply to observe proceedings from the public gallery (see case example 11).

This view is supported by the decision of the court in *R v North Yorkshire County Council ex parte Richardson* [2003] EWHC 764 (Admin). A more detailed analysis of this case will appear in a subsequent edition of the *Case Review*.

paragraph 12

Case example 11 makes clear that a member must withdraw from the room or chamber when a matter in which he or she has a prejudicial interest is discussed.

In case example 11, the Chair of a council declared a prejudicial interest in a planning application and vacated the Chair. She did not speak or vote on the matter. However, she remained in the room when the matter was discussed.

The Ethical Standards Officer considered that the Code's intent in paragraph 12 is clear: the mere presence of a member can influence discussion and decision-making. Members must withdraw from the room. It is not enough to remain and stay silent.

The Ethical Standards Officer found that the member failed to comply with the Code of Conduct by not withdrawing from the meeting room when a matter in which she had a prejudicial interest was discussed.

Q&A paragraph 12

Q67 *Under what circumstances can a dispensation be obtained?*

The circumstances in which a dispensation can be obtained are set out in Regulation 3 of the *Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 (SI 2002/339)*. A dispensation can be obtained in two distinct circumstances: either when at least 50% of those entitled to participate are prevented from doing so by a prejudicial interest or when the political balance of the decision-making body is upset.

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

Please note that there is a problem with the drafting of Regulation 3(1)(a)(ii) of the Dispensation Regulations. The criterion is linked to an authority being unable to comply with its duty under section 15(4) of the *Local Government and Housing Act 1989*. This duty requires the appointment of committees that reflect the overall political balance of an authority. However, the duty does not arise in relation to individual meetings either of the authority or its committees. For this reason it is difficult to envisage circumstances in which the criterion would be met. We understand that this problem is to be addressed by an appropriate amendment to the Regulations. In the meantime we would not recommend that dispensations be granted on the basis of the ‘political balance’ criterion.

Q68 *How is a dispensation obtained?*

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

Q&A paragraph 12

Q69 Should a member publicly declare that they are relying on a dispensation?

Yes. Although there is no requirement in the Regulations, The Standards Board for England strongly recommends members relying on a dispensation, in order to participate in the consideration of a matter in which they have a prejudicial interest, to state this publicly at the same time as they declare the existence and nature of their interest. A dispensation does not excuse a member from compliance with the declaration requirements in paragraph 9(1) of the Code.

Q70 Is it possible to obtain a continuing or ongoing dispensation?

Yes. Regulation 3(2)(a) effectively allows a Standards Committee to grant a dispensation for a period of up to four years. The Standards Committee needs to be satisfied that the criteria for granting a dispensation would be met for the whole period. The Standards Board for England considers that such circumstances will be rare.

Q71 What is an improper influence?

Paragraph 12(1)(c) does not entirely prevent members seeking to influence matters in which they have prejudicial interests. Not all attempts to influence a decision will be ‘improper’. For instance, members who submit a planning application may appoint a planning agent to represent their interests before the planning committee. Improper influence would be any attempt by a member to use his or her position to further his or her own interests, in a way that would not be open to ordinary members of the public. For example, private lobbying of members, or officers, involved in the decision-making process is a clear example of improper influence.

Q&A paragraph 12

Q72 Why are the rules different for overview and scrutiny and joint or area committees?

The role of overview and scrutiny committees is usually purely consultative and advisory. The same is often true of joint or area committees. In these circumstances it is appropriate that less restrictive rules apply to members of these committees in relation to prejudicial interests. The general rule in relation to these committees is that members with prejudicial interests are permitted to participate except in the following three circumstances. First, there are situations where the committee exercises a function of the authority or its executive. For example, where the committee's role is one of decision-making on behalf of the authority rather than a purely advisory or consultative one. Second, there are times when a member will be a member of both an overview and scrutiny committee and the committee or joint committee whose decision is under scrutiny. A prejudicial interest will arise in such situations. However, this does not prevent the member attending to answer questions or give evidence about the decision under scrutiny. This situation is dealt with under paragraph 11 of the Code (see question 64). Last, the member's interest may be of a financial nature.

These less stringent rules reflect the fact that the government wishes to encourage maximum participation of members with relevant knowledge and experience in these advisory, consultative and scrutinising bodies.

Q&A paragraph 12

Q73 *What is an interest 'of a financial nature'?*

The phrase 'interest[...] of a financial nature' can cause confusion. The Standards Board for England considers that this phrase does not refer solely to the financial interests a member is required to register under paragraph 14 of the Code. For the purposes of paragraph 12(2) the phrase 'of a financial nature' is broadly construed. It includes discussion of any issue that could affect the financial position of the member, their relatives or friends, or any organisation through which the interest arises.

For example, an overview and scrutiny committee might be called upon to review a decision to award a valuable contract to the brother of a member of the overview and scrutiny committee. The member will have a prejudicial interest of a financial nature and should not take part in the overview and scrutiny process. The fact that the brother's business is not listed as one of the member's financial interests in the register of members' interests does not exclude the interest from being 'of a financial nature' within the meaning of paragraph 12(2). To equate interests 'of a financial nature' with the *registrable* financial interests listed in paragraph 14 of the Code unreasonably restricts the scope of the provision at paragraph 12(2).

Code of Conduct

paragraph 13

- 13 . For the purposes of this Part, “meeting” means any meeting of –**
- a* the authority;
 - b* the executive of the authority; or
 - c* any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees.

Q&A paragraph 13

Q74 Does 'meeting' also include informal meetings?

No. The provisions only apply to formal meetings of the authority, its executive or its committees or sub-committees. Informal meetings between members and officers and political group meetings are not covered by the requirement to declare interests. However, paragraph 5(a) of the Code, which prevents members from using their position improperly, applies at all times. A member who uses pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest is very likely to fail to comply with paragraph 12(c) of the Code by improperly seeking to influence a decision.

Code of Conduct

paragraph 14

- 14 . Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –**
- a* any employment or business carried on by him;
 - b* the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;
 - c* the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;
 - d* the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;

Code of Conduct

paragraph 14 continued

- 14 . *e* a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
- f* the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;
- g* the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
- h* the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.

Q&A paragraph 14

Q75 *Who should the member notify?*

Members must notify their monitoring officer. Parish councillors must notify the monitoring officer of the district council or unitary authority for the area in which the parish council is situated (see definition of ‘responsible authority’ at paragraph 1(4)(b) of the version of the Code of Conduct that applies to parish councils and section 55(12) of the *Local Government Act 2000*). Some difficulties can arise in relation to parish councils. The obvious point of contact for information of this type is the parish clerk. The clerk needs to have an up-to-date copy of the register of interests in order to comply with the public access requirements of section 81(6) of the *Local Government Act 2000*. It is acceptable for the parish clerk to act as the point of contact between parish councillors and the relevant monitoring officer. However, members must ensure that there is a system in place for the parish clerk to pass on immediately any information to the relevant monitoring officer. Each individual member is ultimately responsible for ensuring that the relevant monitoring officer is in possession of all the required information.

Q76 *What happens when a member is re-elected or reappointed?*

Members are under an obligation to notify the relevant monitoring officer of their interests within 28 days of election or appointment. This obligation also applies in relation to re-election and reappointment. Members are under a continuing obligation to ensure that their register of interests is kept up to date (see paragraph 16). The obligation to re-register in the case of re-election or reappointment will usually be satisfied by a letter that confirms that the details held by the monitoring officer are still accurate and that no additional interests need to be added.

Q&A paragraph 14

Q77 How much detail does a member have to include in the register about his or her employment or business?

Lengthy or detailed descriptions are not required. The purpose of the entry is to identify the interest. The member's job title will normally be sufficient to identify his or her employment, particularly as the name of the employer must be registered under paragraph 14(b). A brief description of the nature of a business will be acceptable.

Q78 What is meant by the requirement to register the name of the person who has 'appointed' the member?

The phrase 'or has appointed him' in paragraph 14(b) is somewhat obscure. The Standards Board for England does not consider that this paragraph obliges self-employed members to register a list of all their clients. Such a requirement would clearly be disproportionate and involve the disclosure of confidential commercial information. The phrase may apply to members who have been appointed to a particular post but who have not yet commenced employment.

Q79 What details does a member have to register about his or her political funding?

The Standards Board for England does not draw a distinction between direct financial assistance (payments of money directly to the councillor for election or other expenses) and indirect assistance (such as payment for election posters or leaflets). Members should register any person or organisation who made a financial contribution (whether direct or indirect) to their election campaign or who assists them with the costs of carrying out their duties. This may include the member's political party. Members should also register any person or organisation who provides premises that relate to a member's official

Q&A paragraph 14

duties, such as somewhere to hold a ward surgery. Members are not required to include in the register details of their political group's funding.

Q80 What does 'place of business' mean?

'Place of business' refers to business premises rather than a piece of equipment (such as a telephone box or an electricity sub-station). However, if a corporate body owns the land on which a piece of equipment such as a telephone box or an electricity sub-station stands then the requirement to register will apply because the body concerned will have 'land' in the area.

See questions 48, 49, 50 and 51 for the meaning of corporate body, class of securities, beneficial interest and nominal value.

Q81 Why is the registration threshold higher than the threshold under paragraph 8?

A higher threshold (nominal value of more than £25,000) is set for the inclusion of shareholdings in the publicly-available register of interests as compared with the £5,000 threshold in relation to the definition of personal interests under paragraph 8. Only in the case of very substantial shareholdings is inclusion in the publicly-available register required. This high threshold is considerably offset, however, by the alternative criteria (more than one hundredth of the total issued share capital). Comparatively modest shareholdings in smaller companies will be caught by this requirement.

Q&A paragraph 14

Q82 Does the member have to register the land-holdings of companies registered under paragraph 14(b) or corporate bodies registered under paragraph 14(d)?

No. There is no requirement to list the land-holdings of companies or corporate bodies included in the register. The only requirement, under paragraph 14(g), is to register any tenancy between such bodies and the authority.

Q83 How much detail is required in relation to the 'description of any contract' under paragraph 14(e)?

Sufficient detail should be given to identify the contract, such as the date and a brief description of the goods, services or works being contracted for. There is no requirement to state the value of the contract or its terms.

Q84 How much detail is required in relation to the description of land-holdings under paragraph 14(f)?

Sufficient detail should be given to identify the land in question. An address and (where the address is not sufficient) a field number or map reference will usually meet the requirement. A plan identifying the land may be useful in some situations but is not required.

Code of Conduct

paragraph 15

- 15 . Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any –**
- a* body to which he has been appointed or nominated by the authority as its representative;
 - b* public authority or body exercising functions of a public nature;
 - c* company, industrial and provident society, charity, or body directed to charitable purposes;
 - d* body whose principal purposes include the influence of public opinion or policy; and
 - e* trade union or professional association.

Q&A paragraph 15

Q85 What does the phrase 'as its representative' mean?

See question 63.

Q86 Is membership of political parties included under paragraph 15?

Yes. A member must register their membership of any political party or campaigning group.

Q87 Is membership of religious organisations included under paragraph 15?

Generally religious organisations will not fall within the scope of paragraph 15(d). The principal purpose of most religious organisations is to provide a focus for religious worship and the common life of the particular faith community that the organisation serves. The influence of public opinion is normally not a principal purpose.

The Standards Board for England does not consider that paragraph 15(d) was primarily intended to apply to religious organisations. However, a member should register his or her religious organisation if one of its principal purposes is to influence public opinion or policy.

Q88 What is a body directed to charitable purposes?

The term 'body directed to charitable purposes' was clearly intended to cover organisations not falling within the legal definition of a charity. Any organisation directed towards charitable purposes (as that term is commonly understood), to any significant degree, comes within the scope of paragraph 15(c).

Q&A paragraph 15

Q89 *Is membership of the Freemasons included under paragraph 15?*

Membership of charities or bodies directed to charitable purposes must be registered in the register of interests in accordance with paragraph 15(c). Some (but not all) Masonic organisations are registered charities with the Charities Commission. Membership of these organisations clearly falls within the scope of paragraph 15(c). However, that is not the end of the matter.

As noted above the term ‘body directed to charitable purposes’ was clearly intended to cover organisations not falling within the legal definition of a charity. Although this is ultimately a matter for a member’s judgement, The Standards Board for England considers that many Masonic organisations will probably fall within the scope of paragraph 15(c). This is reinforced by the United Grand Lodge of England’s description of the Freemasonry as ‘the UK’s largest secular, fraternal and charitable organisation’.

Q90 *What is a public authority or body exercising functions of a public nature?*

For ‘public authority’ see question 62. The phrase ‘body exercising functions of a public nature’ is even wider in scope than ‘public authority’. Again, this indicates that the paragraph should be interpreted broadly. Case-law dealing with bodies amenable to judicial review may be a helpful guide to this issue (for example, *R v Panel on Takeovers and Mergers, ex parte Datafin plc* [1987] QB 815). A function will generally be ‘of a public nature’ where it is underpinned by statute or government.

Q&A paragraph 15

Q91 *What is intended by the requirement to register 'membership of [...] any [...] company'?*

The Department for Transport, Local Government and the Regions responded (in a letter of 8 March 2002 to all chief executives of local authorities) to concerns about the scope of the phrase 'membership of [...] any [...] company'. The letter explained:

'It is not our intention, by means of this provision, to require the registration of all shareholdings. There is provision in the preceding paragraph [of the Code] at (d) to require the registration of shareholdings with a nominal value above £25,000 and in our view, this implies that no further registration is required in respect of shareholdings. Neither is it our intention that councillors should have to register the name of any building society in which they have investments, or from whom they borrowed money and we do not think that paragraph 15 has this effect'.

Code of Conduct

paragraph 16

- 16 . A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's monitoring officer of that change.**

This provision of the Code is self-explanatory.

Code of Conduct

paragraph 17

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

Q&A paragraph 17

Q92 Does a member have to declare all gifts or hospitality he or she receives?

A member has to declare only those gifts or hospitality received in his or her capacity as a member (see paragraph 1(2) above). This requires the member to apply honesty and common sense when he or she considers how receipt of a gift will, or could be, interpreted. For example, if the member is the Chair of the Planning Committee and a birthday present arrives from an applicant just before a planning application is due to be considered, then the member must consider how this would be interpreted by a reasonable member of the public. A member should register gifts and hospitality if they could reasonably be viewed as relating to a member's official duties. This will not normally include gifts from friends or family.

Q93 Does the value of £25 apply to each individual gift or to the total value of gifts given? How does the notification threshold of £25 work in practice?

A degree of common sense needs to be applied here. Where gifts come from the same source over a period of time and the cumulative value of the gifts is over £25 they ought to be registered.

Q94 Does a member have to declare gifts that are refused?

No. A member must declare only those gifts that are accepted.

Q95 Does a member have to declare all sources of gifts?

Yes. Although this is not expressly stated in the Code, The Standards Board for England considers it is clear that the donor was intended to be registered. Without such information the register will be of very little use.

Q&A paragraph 17

Q96 What is hospitality?

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

Q97 How should members assess the value of hospitality received?

Members may find themselves at a function where relatively lavish hospitality is on offer but the member does not choose to partake of it. For example, a member may go to a champagne reception but only drink a glass of orange juice. The Standards Board for England believes that the best way to preserve transparency is for members to assess the hospitality on offer. It would clearly not be in the member's interests to be drawn into arguments about how much he or she ate or drank at a particular occasion. As a guide the member should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. Clearly where the member is in any doubt the prudent course is to register the hospitality.

Q98 Does a member have to declare hospitality extended to him or her in the course of his or her authority's business, such as official dinners or business lunches?

The Standards Board for England does not consider that hospitality should be registered where it is clearly ancillary to the business being conducted, such as an overnight stay for an 'away-day'. However, the hospitality should be registered if it is over and above what could reasonably be viewed as ancillary to the business conducted. Members might meet dignitaries or business contacts in council offices. However, if such meetings take place in other venues (such as at cultural or sporting events), this should be registered as hospitality.

Q&A paragraph 17

Q99 What is the position of the Mayor or Chair of an authority?

There are no special rules for those who serve as Mayor or Chair of an authority. Gifts that are clearly made to the authority (for example a commemorative goblet which is kept on display in the authority's offices) do not need to be registered in the member's register of gifts and hospitality. On the other hand such gifts ought to be recorded by the authority for audit purposes.

Although the Mayor or Chair may attend many social functions they are not exempt from the requirement to register hospitality. All hospitality worth more than £25 must be registered.

Q100 Should the register of gifts and hospitality be available for public inspection?

There is no specific requirement for local authorities to make available the register of gifts and hospitality for public inspection. However, some authorities do put a register in the public domain in the interests of open and transparent local government. The Standards Board for England endorses this practice, provided that the consent of the members concerned is obtained.

