



The IDeA Guide for New Members

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Please note

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Introduction

A MORI report for the Standards Board for England commissioned in 2001 on 'Trust In Local Councillors' found that while 88 per cent of respondents trusted doctors, only 37 per cent had trust in their local councillors. While this low expression of trust in local councillors might be alarming, it should be seen in the context of a small number of headlines of member misbehaviour hiding the good work and honesty of the vast majority of local councillors.

The public have a right to expect honest and upright behaviour from their elected representatives. Confidence in local democracy is essential to an open and inclusive society. This confidence can only be achieved when those serving their communities adhere to – and can be held accountable for – the high standards the public has a right to expect from them.

The Nolan Committee on Standards of Conduct in Public Life reported in 1997 that it found that standards of conduct in local government were generally high. The occasional case of misconduct however, led to a public perception of impropriety and dishonesty in local government. The Nolan Report outlined the following principles that those in public office should adhere to –

Selflessness – Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or material benefits for themselves, their family or their friends.

Integrity – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity – In carrying out public business, including making public appointments awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability – Holders of public office are accountable their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness – Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty – Holders of public interest have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership – Holders of public office should promote and support these principles by leadership and example.

These principles form part of a 'new ethical framework' that seeks to modernise and reinforce the democratic process in local government. They also were approved by Parliament in the Relevant Authorities (General Principles) Order 2001. The framework builds on the principles outlined above and has been implemented in Part III of the Local Government Act 2000. The Act contained provisions for a Model Code of Conduct that had to be adopted by local authorities by May 2002. All members are required to sign the Code of Conduct and comply with its provisions, while an agreement to abide by the Code is part of the oath of office for new members.

The Act also set up The Standards Board for England to oversee the Code of Conduct and, in partnership with local government, promote and maintain high standards of conduct by all members. The Act also required authorities to set-up local standards committees to oversee the ethical framework at a local level.

Aims

When you have finished this chapter you should:

- Be aware of the importance of ethics and standards in public life
- Have an understanding of the Standards Board for England role in the new ethical framework
- Have an understanding of the Code of Conduct and its requirements
- Be aware of other regulators' roles and the wider legislative context for conduct and behaviour in local government
- Have an understanding of the role of standards committees.

The Standards Board for England

The Standards Board for England was set-up under Part III of the Local Government Act 2000 and was established as an independent, non-departmental public body in March 2001. The Act was partly a consequence of the Nolan Report into standards in public life and was partly intended to address the somewhat negative public perception of local government. Nolan found that standards within local government and the conduct of members were of a generally high standard. He found that communities were well served, but that a confusing mixture of requirements and codes did not help members provide the high standard of public service their office demanded.

Nolan therefore recommended a streamlined and consistent set of arrangements for local government so that both people in public office and the public they serve were clear as to the standards expected to be met. He sought to change the negative perception and general mistrust the people had of its elected representatives at the local level of government.

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The role of the Standards Board is to promote and maintain high standards of conduct in local government, investigate allegations of misconduct, and oversee the Model Code of Conduct, a new set of rules that replaced the old National Code of Local Government Conduct. (See the next section for a full outline of the Model Code of Conduct and its requirements).

The Standards Board covers a wide range of authorities, including the following:

- County, Unitary, Borough and District councils
- Parish and Town councils
- Police Authorities
- National Park authorities
- The Broads Authority
- Fire and Civil Defence authorities
- Passenger Transport authorities
- Greater London Authority
- The Corporation of London
- The Broads Authority
- The Council of the Isles of Scilly

It is important to note that the Standards Board does not have any responsibility for the conduct of officers employed as staff in these authorities. The Board is only concerned with the conduct of members and co-opted members. Its remit also does not extend to the conduct of authorities as a whole. The Local Government Ombudsman has responsibility for charges of corporate maladministration, as outlined in the final section of this chapter, whilst the Audit Commission oversees financial propriety of authorities.

The Code of Conduct

The Model Code of Conduct came into force in November 2001. Every authority was required to adopt a Code of Conduct that sets out rules governing the behaviour of its members by May 2002. All elected members and co-opted members of local authorities are covered by the Code. Each Code must include the provisions of the Model Code of Conduct, although additional local provisions could be added. After this date the Model Code was automatically applied to those who had not adopted the Code.

The Code of Conduct in general covers areas of individual behaviour such as members not abusing their position or not misusing their authority's resources. In addition there are rules governing registration and disclosure of interests. Whenever they are conducting council business or representing the council, members are bound by the code.

Two provisions of the code apply whether or not members are conducting the business of their authority. Members may breach the code if at any time they act in such a way that brings their authority or office into disrepute, or use their

office to improperly secure for themselves or any other person an advantage or disadvantage.

General obligations

Part One of the Code of Conduct sets out general obligations.

Under the Code Members have a positive obligation to –

- Promote equality by not discriminating unlawfully against any person
- Treat others with respect
- Not use undue influence
- Report a breach of the Code of Conduct to the Standards Board if you reasonably believe another member breaks the authority's Code of Conduct.
- Only use the resources of the authority in accordance with its requirements
- Make sure they don't misuse the authority's resources, in particular, for political purposes unless it is in order to discharge of the functions of either the authority or their elected office

Equally, members have an obligation not to –

- Compromise the impartiality of anyone who works for, or on behalf of, the authority
- Disclose confidential information without valid consent
- Prevent anyone getting information that they are entitled to
- Bring their office or authority into disrepute at any time
- Use their position improperly to the advantage or disadvantage of yourself or anyone else

Personal and Prejudicial Interests

Part Two of the Code of Conduct concerns personal and prejudicial interests, their disclosure and their effect on participation in council meetings.

At council meetings, each member has a duty to declare an interest if it is either a personal or prejudicial interest.

What is a personal interest?

A personal interest in a matter is one which can be reasonably regarded as affecting the individual, family or friend more than other people in the area. If a member has a personal interest, that member can stay and take part and vote in the meeting. A member may have a personal interest if it affects either –

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- Themselves
- Their partner, relative or a friend
- Their employer, or the employer of their partner, relatives or friends
- Any corporate body in which they, their partner, relatives or friends hold shares with a nominal value of more than £5000 or of which the member or they are a director
- Any firm in which they, their relatives or friends are partners
- A member must also declare if discussion concerns one of the following organisations in which they, relatives or friends hold a position of control or management:

A body where you or they are a representative or nominee of the authority

A body exercising public functions

A company, industrial and provident society, charity or body directed to charitable purposes

A body which seeks to influence public opinion or policy

A trade union or professional association

The onus is very much on the individual member in deciding if a personal interest exists,. If a member believes that they have a personal interest, they should make their declaration at the beginning of the meeting or as soon as they are aware of the issue being discussed. They should also say if anything being discussed relates to anything they are required to declare on the register of interests. If a member holds a personal interest then that member can still participate in the discussion and vote. The Code of Conduct was designed to encourage participation in an open manner, not restrict participation.

What is a prejudicial interest?

Under the Code of Conduct, the test for determining whether a member has a prejudicial interest is if a member of the public, who knows all the relevant facts, would view a member's personal interest in the issue being discussed to be so great that it is likely to prejudice that member's judgement of the public interest. If a member of the public were to believe that an interest would be prejudicial, then that member must leave the meeting. A member must leave the room entirely and not seek to influence any decisions made.

A member must use their personal judgement when deciding if they have a prejudicial interest and where there is doubt ask for advice.

However, a member may regard themselves as not having a prejudicial interest in a matter (and consequently, in some situations, not have to withdraw from the meeting) if that matter relates to, among other things –

- a) another relevant authority of which they are a member
- b) another public authority in which they hold a position of general control or management
- c) a body to which they have been appointed or nominated by the authority as its representative

- d) Statutory Sick Pay functions
- e) Allowances (see Para 9(d) & 9(e))

Each situation should always be judged on its own merits. Given that the wording includes the term 'may regard' there is an indication that there will be some circumstances where it would be inappropriate for a member to take advantage of this exemption. Those circumstances will generally exist where there are additional factors beyond the mere fact that an interest falls into the above exemptions.

Registering Interests

Part Three of the Code of Conduct concerns the registration of financial and other interests.

A member needs to register any interests listed in part three of the Model Code of Conduct. These interests cover both financial and other interests. A member needs to register their interests so the public, authority staff, and fellow members know which of your interests might give rise to a conflict of interest. It will also help protect the member by demonstrating that they are open and honest in their dealings. A member is responsible for deciding whether or not they should declare an interest in a meeting, but it can be helpful for a member to know early on if others think that a conflict might arise. It is also important for public confidence that people who are interested in an authority's meetings know about any interest that might have to be declared by all members.

A member must register their interests within 28 days of being appointed by giving the Monitoring Officer written details of any interests they need to register. The register of interests will be available to the public at all reasonable hours, but may not be posted onto the Internet without your consent.

Financial Interests -

- Their job and their businesses
- The name of their employer, any firm they are a partner of and any company they are a paid director of
- The name of any person (other than a relevant authority) who has helped them with expenses associated with their election of their duties as a member
- The name of any 'corporate interest'. That is, any corporate body:
- Which has a place of business or land in their authority's constituent area; and in which they have a beneficial interest in a type of share with a face value worth more than £25,000 or one per cent of the total amount invested in that corporate body by shareholders.

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- A description of any contracts (for goods, services or work) between the authority and them, any firm they are a partner of, any company they are a paid director of, or any of their corporate interests.
- The address or other description of any land in your authority's area which they have a beneficial interest in. (A member would have a beneficial interest in land if, for example, they own, they rent, they are entitled to the proceeds of, or they may, through a trust or will, become entitled to the proceeds, of that land.) The address or other description must be good enough to identify the location.
- The address or other description of any land which any firm they are a partner of, any company they are a paid director of, or any of their corporate interests leases from their authority
- Address of land they have licence to occupy (see para 12 (h) of the Parish Code)

Other Interests

- Their membership of, or position of general control or management in:
 - organisations where they represent their authorityother public authorities or organisations which deliver public services
companies, industrial and provident societies, charities or charitable organisations
organisations with a main purpose which includes influencing public opinion or policy and,
trade unions or professional associations

Gifts and Hospitality

- They need to register any gifts or hospitality worth £25 that they receive in connection with their official duties as a member. A culmination of small gifts that add up to £25 or over also should be declared.
- They do not need to register gifts and hospitality which are not related to their role as a member, such as Christmas gifts from their friends and family, nor do members need to register gifts which they do not accept. However, they should always consider whether any gifts or hospitality could be seen as being connected to their role as a member. If you are in doubt you should seek advice.

Complaints and Investigations

Anyone who believes that a member has breached the Code of Conduct can make a written allegation to the Standards Board.

On receipt of a complaint the Standards Boards Referrals Unit will filter the allegation to determine whether or not it merits investigation.

If an allegation against a member is passed for investigation by an Ethical Standards Officer (ESO), then the Monitoring Officer for the members' area

will be informed that a complaint has been received and misconduct alleged. The clerk will also be notified. The member to be investigated will also usually be informed. Notification will only be delayed if notification to the member concerned might delay or harm the investigation. If an allegation is not investigated then the Standards Board will notify all parties concerned. The Standards Board is unable to deal with allegations outside our remit. If it receives complaints that relate to matters that the police, ombudsman, Audit Commission or other bodies deal with, we will work with them to determine which organisation would best handle the matter. If an investigation is undertaken the ESO can reach one of four findings, but it is important to note that an ESO is operationally independent of the Standards Board:

- That there is no evidence of a breach
- That there has been a breach but no further action is required – if an honest mistake had been made for example
- Refer the matter to be dealt with locally, either prior to the conclusion of the investigation, or after the investigation is complete
- Refer the matter to the Adjudication Panel for England

The Adjudication Panel for England is constituted separately from the Standards Board. It was established under the Local Government Act 2000 to hear and adjudicate on matters concerning the conduct of local authority members. The Panel consists of a President and members appointed by the Lord Chancellor. It sits to consider matters referred to it by an ESO. Any member who is the subject of the adjudication may appear or be represented before the Panel. Where the Panel finds misconduct has occurred, it may decide on suspension from being a member or a co-opted member for up to one year, disqualification for being or becoming a member for up to five years, or it may decide to take no disciplinary action. The individual has a right of appeal to the High Court.

Standards Committees

Under section 53 of the Local Government Act 2000 (LGA 2000), each principal authority must have set-up a committee called a standards committee. The Relevant Authorities (Standards Committee) Regulations 2001 set out the rules governing the size and membership of the standards committee and how it should run its business.

Under the Local Government Act, standards committees have six 'statutory functions'. They must:

- Give the council advice on adopting a local code of conduct
- Monitor the effectiveness of the code
- Train members on the code, or arrange for such training
- Promote and maintain high standards of conduct for members and
- Help members to follow the code of conduct
- Adjudication on cases referred by an ESO.

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A Standards Committee can also receive applications from members for dispensations to take part in meetings and decision-making where more than 50 per cent of the members have the same prejudicial interest. In making a decision whether or not to issue this dispensation, standards committees will be required to follow national guidelines. Each dispensation request should be judged on its own merits and a decision reached after full consideration of all relevant facts. Standards committees must have at least three members, of whom one must be independent (i.e. a lay citizen). Committees greater than three must be constituted by at least 25 per cent of Independent Members. Independent members must be appointed through open advertisement.

If local authorities are operating executive arrangements, the standards committee may not include the directly elected mayor or leader, and may not be chaired by a member of the executive. The standards committees of English district and unitary councils will be the standards committees for the parish councils within their boundaries, and in these cases must include at least one member of any such parish councils, although Standards Board guidance states a preference for two members.

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The Legal Framework for Standards of Conduct

Elected members and officers of local authorities are subject to the criminal law in the same way as the general public. However there are also specific legal frameworks for local authorities in general and councillors in particular because of their special role in acting in the public interest and spending public money. In this section we look at criminal offences (especially corruption), judicial review, the Human Rights Act, the district auditor and maladministration (the remit of the Local Government Ombudsman).

Criminal Offences

The most serious offences encountered in the field of local government, although not specific to it, are those of bribery and corruption. These offences are governed by a series of statutes known collectively as the Prevention of Corruption Acts 1889-1916. The essence of these Acts is that it is an offence to corruptly give, promise, offer, solicit or receive any gift, loan, fee, reward or advantage as an inducement or reward to favour an individual or organisation. Corruption investigations are normally undertaken by the police and district audit (see below), and the consent of the attorney general is required before a prosecution can be started. The burden of proof in corruption cases is different from that normally required: once it has been proved that the accused person has received money or a gift as a reward from any person, it is for the defence to show that it was not received corruptly – i.e. the defendant must prove her/his innocence. Prosecutions are taken against individuals – there is no offence of corporate corruption – but are relatively

rare. Prosecutions are more frequently taken in cases of theft or false accounting, for example in relation to over claimed expenses.

Judicial Review

All local authorities must act only within their statutory powers and must exercise those powers in a proper manner. If they do not they are acting outside their authority ('ultra vires') and this is unlawful. Judicial review can be used by citizens as a means of ensuring that a council acts within the law and takes its decisions properly, and of seeking redress where it has failed to do so. In such a situation it is the council as a corporate body, rather than the individual councillors or officers, which is held to account.

The Human Rights Act

The Human Rights Act (HRA) incorporates the European Convention on Human Rights (ECHR) in UK law. A number of the rights guaranteed by the ECHR have direct relevance to the decision which members of local authorities may make, for considering planning applications,. ECHR rights include the right to: 'freedom from...inhuman or degrading treatment', 'a fair and public trial within a reasonable time' (which may include local authority regulatory processes and internal hearings), 'respect for private and family life...' and the prohibition on discrimination. There is a positive obligation on local authorities to integrate human rights concerns into their day-to-day activities. However a number of the Rights are qualified rather than absolute, and in these cases interference is permissible on certain grounds. One of the key criteria is that of proportionality – that the level of interference is in proportion to the aims being pursued. Officers should be expected to bring these issues to the attention of members when they are relevant, but nevertheless members should see them as an integral part of the legal framework within which they operate.

District Audit

District Audit has a wide-ranging role in local government. Its responsibility includes ensuring the financial probity and health of the authority and the adequacy of its arrangements for securing economy, effectiveness and efficiency. The auditor will assess the processes which the authority uses to ensure that decisions which might have financial consequences are lawful and comply with best practice and relevant regulations and codes. The auditor has powers to stop certain expenditure if it appears that an 'item of account' is contrary to law, and can apply to the courts for a declaration to that effect. The court can then order the persons or council responsible to cease or not incur that expenditure.

Where the LGO finds injustice suffered as a result of maladministration a report will be issued to the authority which recommends action to remedy the injustice and to prevent future occurrences. This can include payment of compensation. Such recommendations are not enforceable through the courts but councils are required to consider them and to publish their response.

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Member-Officer Relationships

Few authorities have histories of extensive misconduct, fraud and corruption. However where this does occur it is sometimes apparent that the local political culture can make it hard to tackle these problems and institute change. There can be particular problems in the relationship between members and officers, including members failing to take the advice of the clerk and actively seeking to discredit some officers.

This is one reason why many authorities have adopted voluntary protocols governing the relationships between members and officers. These protocols set out the respective roles and duties of members and officers, explain how members may contact officers and what services officers may provide for them, deal with members rights to information and other resources of the council and set out a procedure for resolving any difficulties that may occur. They provide members and officers with a clear understanding of how their contributions contribute to the good management of the authority and high standards of conduct.

Whatever structural arrangements are made for officers to advise members, relationships between members and officers in successful local authorities are based on trust, respect and honesty. The converse is also true: the IdeA has shown that in ‘failing’ authorities there is a high degree of blame between members and officers. Members, therefore, must be aware of the different roles and duties of officers and recognise that they operate within their own code of conduct and often-professional regulations.

Review

- Are you aware of the General Principles of Conduct?
- Are you satisfied that you know what the Code of Conduct is?
- Are you aware of its different parts?
- Have you noted its requirements and obligations?
- Do you understand the Standards Boards referral process and investigative role?

- Have you noted the constituent parts of the wider legislative framework?
- How can a Monitoring Officer be of help?

Further Information

The Standards Board for England at www.standardsboard.co.uk
Local Government Association at www.lga.gov.uk
National Association of Local Councils at www.nalc.gov.uk