

**REPORT BY THE
INSTITUTE OF PUBLIC FINANCE
TO THE
COMMITTEE ON STANDARDS
IN PUBLIC LIFE**

**A COMPARISON OF AND OBSERVATIONS
ON DIFFERENCES IN
CODES IN LOCAL GOVERNMENT**

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1. EXECUTIVE SUMMARY

1.1 In announcing the Tenth Report in January this year the Committee made clear its determination to examine the operation of a range of Codes of Conduct, including Local government, in Scotland, Wales and England. The Committee's primary concern was to test the practical operation of the codes against the principle of proportionality ie a reasonable balance between propriety, accountability and efficient and the outcomes intended. The Committee pose a further question as to whether the Codes should apply to all tiers of Local Government.

1.2 This Report commissioned by the Committee, makes both broad and detailed comparisons between the three Local Government Codes, makes observations and formulates questions which the Committee should pursue reflecting its objectives. It identifies significant differences in the operation of the Codes.

1.3 The attached table shows the primary differences between Scotland, Wales and England in terms of costs, volume and outcome on the information available. The differences are examined in the body of the Report and a range of questions formulated.

1.4 In testing the operation of the Codes against the principle of proportionality the Committee will wish to bear in mind that in England in particular:

- 2/3rds of all complaints (3,566 in total received in 2003/2004) are rejected by the Standards Board for investigation.
- Less than 7% of all complaints result in any penalty.
- It can take a year from receipt of a complaint to final adjudication and sometimes longer.

1.5 The Committee will wish to bear in mind on the one hand there is significant support in our survey for Parishes remaining in the ethical framework but on the other should also take this following factors into account. There are over 8,500 Parish Councils whose spending nationally represents 0.375% of total Local Government spending in England yet half of all complaints received and over half of all investigations relate to Parishes. In addressing the issue of proportionality and the application of the Codes to all tiers of Local Government the Committee should pose the following questions:

- Should smaller Parish Councils (say with a budget of less than £20,000 pa or a population of less than 1,000 be excluded from the ethical framework?
- Could a simplified Code (with compliance by sample audited by principal councils) be made for larger Parish Councils?
- If Parishes are retained fully in the ethical framework could the responsibility for receiving, investigating and determining complaints be dealt with locally exclusively?

1.6 Bearing in mind only one in five of complaints following investigation are referred for determination, is there a case for considering either, a local filtering system under rules set by the Standards Board and audited by them, or, a national filtering system which involves preliminary enquiries locally to establish whether the complaint is supported by real evidence.

1.7 In England and Wales in certain respects the Codes of Conduct for members cover conduct in private life contrasting with the position of other elected or appointed

members, eg members of Parliament. In addressing whether the Codes are overburdensome the Committee should consider the following questions:

- Is there any need to refer to conduct in the private life of elected members? Should this be regarded as a local matter for personal consideration, the party political group, and ultimately the ballot box?
- Is there any need as in Wales to require members not to commit criminal offences?

1.8 Members are obliged in Wales and in England (but not in Scotland) to report to the Standards Board any conduct by a colleague which they believe is a failure to observe the Code. The Committee should satisfy itself that on balance there is a clear need for this provision and why in Scotland it was considered unnecessary.

1.9 Concerns have been expressed that the operation of the new Codes has the effect of diminishing the representational role of members whose constituents expect them to advocate their views at Council meetings. This concern relates particularly to planning issues. The Committee should consider whether the operation of the Codes, aimed at high standards, also has the effect of diminishing the ability of the elected member to discharge his democratic mandate and whether, as in Scotland, the position of members in these circumstances should be defined in the Code.

	SCOTLAND	WALES	ENGLAND
	Standards Commission	Local Government Ombudsman	Standards Board for England
Approved budget 03/04	£400,000	£226,168 ⁽⁴⁾ (02/03) (Indicative only – see below)	£8,130,000 ⁽²⁾
Number of complaints received 03/04	139 ⁽¹⁾ at 31 March 04 (Since 1 May 2003)	184 ⁽⁵⁾ (since 1 April 2003 to 2/3)	3,566 (2,948 in 02/03)
Complaints investigated or referred for investigation	139	76 (since 1 April 2003 to 2/3/04 26 to M.O for investigation.	1,212 (34% of total received)
Complaints referred for adjudication after investigation	3 (5% of cases investigated at 31.3.04)	2 to Adjudication Panel by Ombudsman 1 via Monitoring Officer	242 (12% to Adjudication Panel 8% to Monitoring Officer)
Average cost of investigation (Carried out by the Board, the Commission, and the Ombudsman respectively).	Not available at April 04 (78% of investigations completed within 3 months)	Not available at April 04	£3/4,000 ⁽²⁾
Number of Members covered	Estimated 3,500	Estimated 16,000	100,000

1. *From 1 May 2003 to 31 March 2004: Standards Commission.*
2. *Standards Board for England: Corporate Plan – Annex 2 – 2002/03*
3. *Standards Board for England: Cumulative Statistics*
4. *Estimated as a % of total approved budget of Ombudsman Services based on proportion of member conduct complaints received to the total of all complaints. Source Local for Ombudsman for Wales.*
5. *An element of this is likely to relate to complaints against members of a single council involving the same circumstances.*

2. THE CURRENT LEGISLATIVE FRAMEWORK IN ENGLAND, SCOTLAND AND WALES.

2.1 ENGLAND

2.1.1. There are important fundamental differences in the statutory frameworks for Scotland, England and Wales. The statutory structure in England is contained in Part III Local Government Act 2000. There was relatively little debate on Part III as the Bill passed through its Parliamentary stages. In essence the Act created a national body the Standards Board for England to give guidance to “relevant authorities” (See Appendix 2) ie primarily local authorities, police, fire and civil defence authorities). Any person may make a written allegation to the Board who must decide (the function may now be delegated to a committee, member or officer⁽¹⁾) whether or not it is to be investigated. If so it must be referred to an ethical standards officer who exercises extensive personal statutory powers independently of the Board to conduct an investigation and also to decide at the end of an investigation whether the Code of Conduct has been breached and if so whether it should be referred for a hearing and determination.

2.1.2 The Local Government Act 2000 also established an Adjudication Panel to hear cases referred by an ethical standards officer with power to impose a range of penalties including suspension and, at maximum, disqualification for up to 5 years.

2.1.3 Standards Committees were also required to be established for all relevant authorities (save for Parish and Town Councils) with at least one independent member and two elected members (no more than 1 member of the executive

1. *S.112 Local Government Act 2003*

but not the executive mayor or leader ⁽¹⁾). Standards Committees are a key component in the new ethical framework in England exercising statutory powers to promote and maintain high standards of conduct, monitor the operation of the Code, and advise and train members. The Monitoring Officer is seen as a key advisor in assisting the Committee to discharge its functions⁽²⁾. The Act enables the ethical standards officer to refer an allegation to the Monitoring Officer for investigation (when regulations permit) and subsequent reference to the Standards Committee for determination, or, at the completion of an investigation by the ethical standards officer, to the Standards Committee to hear and determine the case where the ethical standards officer consider the stronger penalties available to the Adjudication Panel are not needed. Although the Standards Board has been receiving allegations since early in 2002 regulations to enable Standards Committees to hear and determine references from ethical standards officers did not come into effect until 30 June 2003. The regulations to enable Monitoring Officers to carry out investigations locally have still to be made and are currently the subject of a second consultation paper. In Wales the regulations to enable Standards Committees to hear and determine cases, and, Monitoring Officers to investigate were made by the National Assembly for Wales and brought into effect on 28 July 2001 ⁽³⁾. Bearing in mind the volume of complaints in England, it is surprising that it should have taken so long, to engage the partnership with local authorities provided for in the 2000 Act and there is a widespread view that this has hindered the momentum of embedding the ethical framework in authorities and undermined support and respect for the new provisions.

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1. *S 53 (5)(a) Local government Act 2000.*
 2. *DETR Guidance Para. 8.2 D & 8.21 October 2000.*
 3. *Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.*

2.1.4 Both in Wales and England the regime established to determine the Codes of Conduct which members must observe is similar. In England the Secretary of State by Order ⁽¹⁾ specifies the general principles which are to govern member conduct which must be approved by resolution of both Houses. The National Assembly for Wales exercises this power in relation to Welsh authorities. Both the Secretary of State and the National Assembly have issued a Model Code of Conduct setting out the standards of behaviour expected of members and co-opted members^(2 & 3). Whilst the 2000 Act provides for mandatory and optional provisions in the model code both in Wales and in England, in fact they have been made exclusively mandatory. Councils have been advised by the Standards Board for England not to add purely local additional and consistent provisions notwithstanding the power of a local authority under the 2000 Act to do so.

2.1.5 Standards Committees in English district and unitary county councils have the statutory responsibility of being the Standards Committees for any parish councils in their area, as are Welsh county and county borough councils in respect of community councils in Wales.

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1. *The Relevant Authorities (General Principles) Order 2001.*
 2. *The Conduct of Members (Model Code of Conduct) (Wales) Order 2001.*
 3. *The Local Authorities (Model Code of Conduct) (England) Order 2001.*

2.2 WALES

2.2.1 In Wales a new external body was not established to receive and investigate allegations of failure to comply with Codes of Conduct. Instead those duties are vested by the 2000 Act in the Local Commissioner in Wales ⁽¹⁾ as an addition to his duties to investigate allegations of maladministration in principal councils in Wales. In practice the Local Commissioner decides whether or not to investigate and either one of his investigators would do so or it would be referred to the Monitoring Officer to investigate. Where investigated by the Commissioner (like the ethical standards officer in England) the investigator may decide to refer the report of the investigation to the local authority's Standards Committee, or, in more serious cases to the Adjudication Panel for Wales ⁽²⁾.

2.3 SCOTLAND

2.3.1 The statutory structure in Scotland is radically different to England and Wales. The Ethical Standards Act in Scotland ⁽³⁾ is one of the earliest statutes passed by the Scottish Parliament and established a Standards Commission responsible for both giving guidance and for conducting hearings and making determinations following an investigation and report by the Chief Investigating Officer. Both the Commission and the Chief Investigating Officer are appointed by Scottish Ministers. The Commission has wide powers of direction over the Chief Investigating Officer but cannot prescribe how he is to conduct an investigation.

1. S.69 + S.68 *Local Government Act 2000*.

2. S.69 (4) *Local Government Act 2000*.

3. *The Ethical Standards in Public Life etc (Scotland) Act 2000*.

2.3.2 The ethical framework in Scotland covers not only the 32 local authorities but also 135 Devolved Public Bodies ⁽¹⁾. Following approval by a resolution of the Scottish Parliament a Code of Conduct for councillors has been issued by Scottish Ministers containing both principles and rules. A Model code of conduct for devolved public bodies has been issued with Scottish Parliament approval and each devolved public body has received approval of Ministers to its Code of Conduct. Unlike the Code for councillors, which is wholly prescribed, the Codes are individually approved for each devolved public body. They vary a little but are fundamentally the same.

2.3.3 The Councillors Code of Conduct and the individual Codes of Conduct for Devolved Public Bodies came into effect on 1 May 2003.

1. *Standards Commission Scotland – Annual Report 2002/2003 – Appendix*

3. THE SECONDARY LEGISLATIVE FRAMEWORK: PRINCIPLES AND CODES.

3.1 THE PRINCIPLES

3.1.1 The Committee in its Third Report set out seven principles for those holding public office all of which are reflected in the general principles laid before Parliament and approved by resolution of both Houses in 2001⁽¹⁾. The scope of the seven principles were extended in the general principles presented to Parliament by stating the need to uphold the law, use resources properly, to reach decisions based on personal conclusions and to have respect for others.

3.1.2 The General Principles issued by the National Assembly for Wales are broadly similar to those in England.

3.1.3 The key principles which underpin the Codes of Conduct in Scotland are based on the Seven Principles but as in England extend those principles to include duties to uphold the law, use resources prudently and to respect fellow members and employees.

3.1.4 It is interesting that in England and Wales the General Principles are contained in an Order separate from the Model Code. It is consequently possible in Scotland, where the principles and rules of conduct are contained in the same Code, for a member to be subject of an allegation of failure to observe the Code which solely

1. *The Relevant Authorities (General Principles) Order 2001.*

relates to a failure to observe one or more principles as opposed to a more detailed rule of conduct. The duty on the part of elected and co-opted members in England is to observe the Code of Conduct but this does not extend to the principles; this has arguably led to them being overlooked with a consequential imbalance of attention to the minute detail of some aspects of the code rather than the fundamental purposes which lie behind it.

3.2 THE CODES

3.2.1 The Model Code in Wales ⁽¹⁾ was issued on 28 July 2001 and at the same time regulations⁽²⁾ were also issued enabling Monitoring Officers to carry out investigations into alleged breaches and enabling Standards Committees to hear and determine cases.

3.2.2 In England the Model Code ⁽³⁾ came into force on 27 November 2001 but the regulations to enable Standards Committees to conduct hearings ⁽⁴⁾ were not brought into effect until 30 June 2003 and, regulations to enable Monitoring Officers to carry out investigations are now the subject of a second consultation paper by the ODPM and may well not now be made and brought into force until later this year. This delay in actioning the partnership envisaged in the 2000 Act between the Board and Local Government is in spite of the Board receiving almost 300

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1. *The Conduct of Members (Model code of Conduct) (Wales) Order 2001.*
 2. *Local government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.*
 3. *The Local Authorities (Model Code of Conduct) (England) Order 2001.*
 4. *The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.*

allegations on average per month, and, whatever the practical reason for it, gives the impression of a reluctance to engage local government and a lack of confidence in it to play its part in maintaining standards through investigation and adjudication.

3.2.3 In Scotland the Councillors' Code and the Codes for Devolved Public Bodies came into effect on 1 May 2003.

3.2.4 The significant differences between the three local government Codes in the UK are identified and commented on in Section 6 below.

4. RECENTLY EXPRESSED CONCERNS REGARDING THE ENFORCEMENT OF THE CODES OF CONDUCT.

4.1 The Committees decision to prepare its Tenth Report comes against a background of recently expressed adverse criticism of the operation of the new ethical framework in the Guardian⁽¹⁾ and the Times newspapers ⁽²⁾ and more particularly in the Parliamentary debate on 14 January ⁽³⁾ 2004 in the House of Commons. The issues raised are addressed in paragraph 6 below. The main complaints about the enforcement of the Codes in England were:-

- No proper filter for erroneous, trivial or vexatious, or purely political complaints.
- Excessive time in conducting and completing investigations.
- A disincentive to stand for public election to office.
- Only a very small proportion of allegations result in penalty.
- Double standards in comparison with M.Ps. ie private/public life.
- There is a case for excepting small Parish Councils and a simplified procedure for planning observations.
- The identity of the complainant should be public at the outset.

4.2 These concerns relate to the Committees' consideration as to whether the processes adopted in enforcing the Codes are unduly burdensome and disproportionate to the outcome.

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1. *Guardian website – 12 January 2004 – Helene Mulholland*
 2. *Times on line – 25 January 2004 – Nick Speed*
 3. *House of Commons Hansard Debates for 14 January 2004 (pt.3).*

5. BROAD ISSUES

5.1 VOLUME OF ALLEGATIONS AND COSTS

5.1.1 It is not easy to make meaningful comparisons between the codes for elected members across the UK because the number of local authorities and other bodies included in the ethical framework vary very considerably between England, Scotland and Wales. The Codes in England for instance include over 8,500 parish Councils and 477 'relevant bodies' ie principal councils, police, fire and civil defence, national parks, passenger transport authorities, national parks and the GLA. In Scotland there are only 32 local authorities but 135 (to date) Devolved Public Bodies⁽¹⁾. In Wales there are 30 local authorities and 1,500 Community Councils. The following table summarises the differences.

1. *Standards Commission Annual Report 2002/2003.*

5.1.1

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Number of Members covered	Estimated 3,500	Estimated 16,000	100,000

1. *From 1 May 2003 to 31 March 2004.*
2. *Standards Board for England: Corporate Plan – Annex 2.*
3. *Standards Board for England: Cumulative Statistics ³/₄*
4. *As a % of total approved budget of Ombudsman Services based on proportion of member conduct complaints received to the total of all complaints. Source Local for Ombudsman for Wales.*
5. *A significant element of this relates to complaints against members of a single council involving the same circumstances.*

5.1.2 It is interesting to note the cost of investigations in England where over half of all investigations (55%) relate to Parish Councils whose functions, whilst important locally are extremely limited in comparison with principal councils. In terms of overall spending budgeted revenue spending in England for all local authorities in 2003/04 is £77.9 bn and although precise figures are not yet available this is likely to exceed £100 bn when spending on capital and housing revenue accounts are added. By way of comparison the total spending by all parishes in England in the same period is estimated at £375 m ⁽¹⁾. This means that the percentage total spending by Parish councils compared with the whole of local government for 2003/04 is 0.375% yet half of all complaints and over half of all investigations relate to parish councils.

5.1.3 Parish councils were not originally intended to be fully included in the proposed jurisdiction of the new ethical Framework; they were added at the behest of their National Association on the basis that the image problem perceived to undermine respect for the general body of councillors was caused by a negative public view of all types of local authority councillor regardless of their particular council's weight of responsibilities.

5.1.4 In England just under 7% of all allegations received by the Board result in any penalty; this compares with an average of less than 5% for findings of maladministration by the Local Government Ombudsman. It is worth consideration whether these figures demonstrate an unnecessarily wide potential for complaints against local authorities bearing in mind the high costs resulting from dealing with

1. *“Research in 1992 by Aston Business School found that parish precepts accounted for about 60% of the total expenditure by parish and town councils. If this is still the case, then total expenditure in 2003/04 is in the region of £375 m”. – Extract from Local Government Financial Statistics England No.142003 published by the Office of the Deputy Prime Minister.*

them. It also raises the question as to whether resources would not be better concentrated on other activities perceived by the public as warranting closer scrutiny and opportunities for redress. Consider for example the almost non-existent external scrutiny of estate agents where there is no compulsory code of conduct or any effective policing of the two thirds of estate agents who decline to sign up to the National Association of Estate Agents voluntary code. In spite of this, the public lodges nearly double the number of Standards Board complaints each year against the one third of estate agents volunteering to abide by their national code and their Association's Ombudsman is powerless to deal with any others. This and other examples tend to demonstrate that the present system now affecting local authorities and some other public sector bodies is wholly out of proportion to the public's wishes and the actual need for such a regime.

5.1.5 There are, of course, additional costs to local government in discharging its statutory functions via Standards Committees including investigations (by Monitoring Officers when regulations permit) and hearing and determining cases referred. The additional cost in England in discharging these functions is not quantified. We have not identified the costs of operating the Adjudication Panel in England.

5.2 THE NEED FOR A FILTER

5.2.1 In England 2/3 of all complaints received by the Standards Board are not referred for investigation by Ethical Standards officers, and only twenty per cent of those investigated are referred for adjudication. Fewer than 7% of all complaints received

result in a penalty ⁽¹⁾ (assuming all references to Adjudication Panel and Standards Committees result in a finding of failure and penalty). The average time taken from receipt by the SBE to completion of an investigation is not recorded in the statistics quoted on the SBE website. Nevertheless an analysis of 26 published summary cases involving investigations completed between January and November 2003, selected to cover a range of allegations concerning primarily principal councils, indicated the average time taken from receipt by the SBE to completion of investigation was 8.5 months. Of the 26 cases all were the subject of conclusions by the ethical standards officer that either there was no evidence of failure or that no action need be taken, save for two cases, which were subsequently referred to the Adjudication Panel. In one of those cases the Panel found the respondent did not fail to comply with the Code and, in the other, imposed a penalty of 1 month's suspension. Two of the cases would have been referred locally for adjudication had the regulations been in force.

5.2.2 Bearing in mind time taken to investigate and the small percentage of cases which result in penalty it must be questioned as to whether a better filtering process is required to cut out frivolous, vexatious, erroneous or purely politically motivated complaints where there is little or no clear evidence to support them. Delays in reaching a conclusion which exonerates the respondent may not be seen to be in the interests of the local authority, nor the respondent, nor the complainant and most importantly not the public whose confidence in local government the ethical framework aims to promote. It may be argued that the burden of a complaint and investigation can weigh heavily on the minds of elected members even in those cases where there is

1. *The Standards Board cumulative statistics for financial year 2004. Total number of allegations 3,566 with 20% of cases investigated being referred for determination either locally or nationally.*

little or no real evidence to justify a national investigation.

5.2.3 The rate of rejection of allegations for investigation and the time taken to reach an investigative conclusion together with the small percentage that result in any form of penalty would seem to weaken efforts to promote greater public confidence in local government standards of conduct. It remains to be seen whether investigating and determining cases locally proves to be much quicker than a national process and to have a more immediate impact and influence on conduct locally.

5.2.4 It is difficult to address the issues of volume of complaints and delay without also looking at the inclusion of Parish Councils in the ethical framework. It was the original intention (see Annex 1) that a simplified procedure for Parish Councils would be introduced. In the event Parishes were brought fully into the Model code of Conduct. This added 8,500 'authorities' to the 477 "relevant authorities" and increased the number of members embraced by the new system from 20,000 to 100,000. Half of all allegations of failure to observe Codes of Conduct and over half of all investigations relate to Parish Councils. 58% of parish and community councils in England and Wales have an annual income of less than £20,000 and, as stated in paragraph 5.1.2, parish council spending as a whole in England represents 0.375% of local government spending nationally ⁽¹⁾. The contribution made by Parishes to local communities should not of course be underestimated but it is reasonable to ask the question as to whether the same strictures on conduct as for District, Unitary and County Councils should apply.

1. *Society of Local Council Clerks in England and Wales survey.*

5.2.5 In recommending the Committee give consideration to the questions listed below we have borne in mind the local importance but relatively limited nature of Parish functions which are almost exclusively minor powers as opposed to duties. Arguably the most important function is making observations on planning applications. Bearing in mind Parishes do not make decisions on planning applications but only make observations or recommendations on them, it may be a sufficient obligation to declare and record interests in the report to the Planning Authorities.

5.2.6 The burden in England on District Councils of performing Part III LGA 2000 functions also for Districts falls disproportionately on Districts and Unitary Councils. The number of parishes for which they are responsible varies from 0 – 136 ⁽¹⁾. Taking a proportion of Parishes out of the ethical framework in terms of national process would not only substantially reduce the burden of work for the SBE and consequently provide capacity to improve time delays, but also reduce the burden to many Districts. We note that in considering the extent of powers to be given to Standards Committees the proposal to enable Standards Committees to impose a maximum penalty of 6 months (as in Wales) was reduced to 3 months at least in part on the grounds that Parishes did not want District Councils suspending their members. ⁽²⁾

5.2.7 The current imbalance in responsibilities and workloads between principal councils because of the number of parishes in each area and absence of additional funding for those authorities most affected warrants investigation of other ways of ensuring

1. *London Boroughs have no parishes. Herefordshire Council has 136.*

2. *Conduct of Councillors – Local Investigation and Determination of Misconduct Allegations – Summary of responses to consultation paper – ODPM – June 2003.*

that cases are heard locally and regularly by Standards Committee members who therefore become expert in handling such matters. The present system in England for example is unlikely to result in many authorities without parish jurisdiction dealing with a case more than about once every two years; this in turn will be likely to result in the current dormant state of some standards committees in such authorities being exacerbated and their proactive statutory duties being increasingly ignored. A requirement for all Standards Committees to report annually to full council on how they have performed their statutory duties in the last twelve months would help to correct the latter tendency and some radical re-arrangement of responsibilities would do likewise in relation to lack of experience from dealing with cases.

5.2.8 There is a potential resource in two tier local government areas where County Councils, with relatively robust corporate administration, have no responsibility for Parishes in their area. Consideration could be given to lighten the burden on some Districts to enable County Councils Monitoring Officers and Standards Committees to carry out investigations and determinations respectively at the request of District Councils. The great majority of parishes are within two tier areas.

5.2.9 The Committee may wish to consider the following questions:

- (a) should smaller Parish Councils (say with a budget of less than £20,000 pa or a population of less than 1,000) be excluded from the ethical framework?
- (b) could a simplified code (with compliance [by sample] audited by District and Council Councils) be made for larger Parish Councils?
- (c) What safeguards in relation to (a) or (b) above would be required (if any) to maintain public confidence?

- (d) What role could District and/or County Councils play in sampling and auditing Parish Council decision making?
- (f) Is there a case for returning to the question of a local filtering mechanism under rules set by the SBE audited by them and linked to a new regulation requiring the number of independent members on Standards Committees to be increased? Could the filter be operated through a sub-committee of the Standards Committee and chaired by an independent member leaving the majority of the Committee free to conduct a hearing, in due course if necessary, untainted by prior involvement.
- (g) Is there a specific role for Monitoring Officers in assisting either the Board or Ethical Standards Officers on decisions whether or not to investigate?
- (h) If Parishes are retained fully in the ethical framework could the responsibility for receiving, investigating and determining complaints be dealt with exclusively locally coupled with a power for a District Council to request the SBE in any particular case that it should be referred to the Board for action?

5.3 STATUTORY DUTIES OF LOCAL AUTHORITIES UNDER ETHICAL FRAMEWORK

5.3.1 In England and Wales these duties are discharged by Statutory Standards Committees whose functions and composition is largely governed by statute and by regulations. These duties comprise promoting and maintaining high standards of conduct by members, assisting members to observe the Code, advising the council on the adoption or revision of the Code, monitoring the operation of the Code,

advising and training⁽¹⁾. A council can give its standards committee any additional functions it considers appropriate.⁽²⁾.

5.3.2 In England the Committee must have at least one independent member and at least two of the councils' elected members. District Council Standards Committees must also have at least one parish councillor who must be present when matters relating to Parish Councils are being considered. In Wales at least half of the members of the Standards Committee must be independent as must the Chair. No such requirement applies in England where Chairs may be elected members and only one independent member is required. There is a case for increasing the proportion of independent members in England so that they comprise the majority of the Committee. This would make the convening of quorate meetings easier as regulations require at least one independent member to be present at meetings. Most importantly however, in local hearings and determination by Standards Committees public confidence in the ability of Standards Committees to "self regulate" objectively would be enhanced by the appearance (as well as the fact) of decisions being made more at arms length from politics.

5.3.3 The Committee may wish to reflect on how training is provided for members. It is understandable that the Standards Board for England is reluctant to become involved in detailed training bearing in mind its primary duties to receive allegations and to ensure that allegations which warrant investigation are investigated. A measured and defined training programme available nationally should be considered and a requirement imposed or recommended that no one should sit on a hearing until such hearing had been undertaken and updated annually.

1. S.54 (1) + (2) LGA 2000

2. S.54 (3) LGA 2000

5.3.4 In Scotland there are no statutory requirements to establish Standards Committees although each local authority and devolved public body has a general function to promote the observance of high standards by members and to assist them in observing the Codes⁽¹⁾. Many local authorities in Scotland have, of their own volition, established Standards Committees.

1. *S.5 Ethical Standards in Public Life etc (Scotland) Act 2000*

6. CODE VARIATIONS IN DETAIL

6.1 OFFICIAL AND PRIVATE CONDUCT

6.1.1 It is interesting to note that in Scotland the general rules of conduct apply to members only when they are acting as councillor including representing the council on official business⁽¹⁾. The principles which are part of the Code in Scotland may have the capacity to apply to private life but it is submitted there would need to be a clear link between private conduct and the role of councillor. In England and Wales the Codes largely apply to members acting in their official capacity but in part concern conduct in private life. In England a member must not in his official capacity, or any other circumstance, either conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute, or, use his position improperly to secure an advantage or disadvantage for any person ⁽²⁾.

6.1.2 In Wales the Code applies only to official conduct save that as in England, conduct bringing the members' office or authority into disrepute or improperly securing an advantage or disadvantage for any person can also apply to private life ⁽³⁾. Additionally, in Wales a member must not in his official capacity or otherwise commit a criminal offence or cause one to be committed. This duty would seem, in all significant cases in any event, to be covered by the duty not to bring your office or authority into disrepute. No such specific obligation applies in England.

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1. *Para.3(1) code of Conduct for Councillors & Para.1(1) for the Members Model Code*
 2. *The Local Authorities (Model Code of Conduct) (England) Order 2001 paragraphs 4 and 5 of Schedule 1.*
 3. *Paras. 1, 2, 6 + 7 The Conduct of Members (Model Code of Conduct) (Wales) Order 2001.*

6.1.3 The meaning of “or any other circumstance” has been the subject of consideration by the Adjudication Panel for England who stated (APE.0101):-

“The circumstances should be sufficiently proximate to, or reasonably capable of being linked to or having a bearing on, the official capacity”.

6.1.4 Should the phrase “or any other circumstance” be deleted altogether. It could be argued that conduct in private life has no direct implication for the delivery of local government services and that reprehensible conduct in private life is a matter immediately for the members’ conscience and possible resignation, for his party group, and, in due course, for the ballot box. In the debate referred to earlier in the House of Commons (Paragraph 4.1 above) concern was expressed that Parliament was applying double standards by requiring local government elected members to observe high standards in private life when the Parliamentary Commissioner was only concerned with the conduct of MP’s actions in their parliamentary capacity.

6.1.5 In relation to the Welsh Code the duty not to commit a criminal offence is all embracing and extends from serious matters and offences which carry penalties of imprisonment to regulatory and traffic offences where strict liability applies regardless of intention. Why should members be obliged to report minor regulatory criminal offences by colleagues? The Committee may wish to note that an elected member is disqualified from holding office if within five years since his election he has been convicted of an offence and had passed on him a sentence of not less than three months whether suspended or not without the option of a fine ⁽¹⁾.

1. *Section 80 (1) (d) Local Government Act 1972.*

6.1.6 The duty not to commit a criminal offence appeared in an early draft of the English Model Code, and subsequently, in a further draft, was limited to “serious criminal offences”, and, ultimately, deleted in the final Model Code.

6.1.7 The Committee may wish to consider the following questions:

- (a) Is there any need to refer to the private life of elected members? Could this be reasonably regarded as a local matter for personal consideration, the party political group, and the ballot box.
- (b) Is there any need to require members not to commit criminal offences?
- (c) Should the duty not to commit criminal offences be limited to the imposition on conviction of a fine or any period of imprisonment up to three months?

6.2 DUTY TO REPORT FAILURE BY COLLEAGUES

6.2.1 Both the Welsh and the English Codes of Conduct oblige members to report to the Commissioner or to the Standards Board for England any conduct by another member of their council which they believe involves a failure to comply with the Code. In Wales this is extended to cover conduct by “another person” (which could include anyone) which they believe involves or is likely to involve criminal behaviour⁽¹⁾. Additionally in Wales members are specifically prohibited from making

1. *Para. 6 (1) (C The Conduct of Members (Model Code of Conduct) (Wales) Order Code.*

vexatious or malicious complaints.

6.2.2 There is a subtle difference in this whistleblowing obligation in that the duty to report in England arises on “reasonable belief” not just “belief” as in Wales. The former implies an objective test and a need for some evidence in support.

6.2.3 There are no obligations in the Scottish Codes for members to report on failings by colleagues to observe the Code.

6.2.4 Some members feel aggrieved by this duty on the grounds that they are clear when they need to speak out in the public interest but to have a duty to do so, however small the omission or transgression, is unnecessary and damaging to relationships within their authority. On the other hand, it could be argued that a statutory duty to report ensures breaches of the Code, however small, are exposed and the duty is a useful point to make to colleagues when writing to the Commissioner or the Board. If this duty were to be deleted from the Codes what would be lost? Members, and indeed any member of the public, would still have the ability to report if they considered it would be right to do so. It would avoid many reports on small or trivial omissions or failures, eg a failure inadvertently to record an interest in the register which had either not been related to any consideration of a matter by the Council, or, if it had, had been the subject of an oral declaration of interest at the meeting.

6.2.5 The Committee may wish to consider the following questions:

- (a) Would the ethical framework be significantly diminished if the duty to report alleged failures by colleagues were deleted?
- (b) Should all such reports, member on member, be required to be first considered by an independent member of the Standards Committee on the advice of the Monitoring Officer for transmission to the Commissioner or Board if the independent member considered it to be warranted?

6.3 DECLARATION OF INTERESTS AND THE INTERESTS OF RELATIVES AND FRIENDS.

6.3.1 The rules contained in the Codes of Conduct in relation to declarations of interest differ significantly between Scotland, Wales and England. It is assumed that the rules were drafted to balance two somewhat conflicting aims, ie firstly, to support public confidence in local authority decision making, through high standards of conduct and, secondly, to err on the side of participation rather than exclusion in the interests of democratic representation.

6.3.2 In England there is a two stage process for members to consider when deciding whether to declare an interest at a meeting. Firstly, a member must decide whether or not the interest is “personal”, ie relates to a matter required to be registered, (which covers defined categories of personal financial and other interests), or, to a matter where a decision made in relation to the interest “..... might reasonably be regarded” as affecting the financial position or well being of the member, a relative or friend more than people in general. This is extended to cover (as well as the member himself, his, relatives or friends) also, any employment or business

carried on by him, any partnership in which he is a partner, companies in which he is a director, corporate bodies in which he has securities of nominal value above £5,000, and certain bodies in which he has general control or management, eg. public bodies, companies, charities, bodies whose principal aims are to influence public opinion or policy, and trade unions and professional associations.

6.3.3 A member whose interest falls within the above criteria who attends a council meeting at which a matter related to the interest is to be considered must disclose to the meeting the “existence and nature” of that interest at the commencement of the consideration. At that point there is no prohibition on speaking and voting. However, having declared so the second stage is to consider whether 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 members’ judgement of the public interest”.⁽¹⁾

6.3.4 If this test is satisfied the member’s obligation is to withdraw from the meeting room or chamber and not seek to influence a decision on that matter. The recent unanimous judgement of the Court of Appeal in the Richardson case⁽²⁾ (which may be appealed to the House of Lords) makes it clear that having satisfied the above personal and prejudicial tests a member may not remain in the meeting room in a private or personal capacity as a member of the public:-

Per Lord Justice Simon Brown

1. *Para.10(1) of Schedule 1 The Local Authorities (Model Code of Conduct) (England) Order 2001.*

“A member of the authority attending a council meeting cannot in my judgement, simply by declaring that he attends in his private capacity, thereby divest himself of his official capacity as a councillor. He is still to be regarded as conducting the business of his office. Only by resigning can he shed that role”.

6.3.5 The words underlined in the ‘prejudicial’ test above were added to try to raise the threshold at which a member was required to leave the meeting room.

6.3.6 Finally, the English code on the face of it enables a member to regard an interest as not prejudicial if it relates to another relevant authority of which he is a member, or another public body in which he holds a position of general control or management or a body to which he has been appointed or nominated by the authority as its representative⁽²⁾. In practice this provision has been eroded by the development of the rules of natural justice and the “real danger of bias” test. Current Standards Board advice is that in considering whether this exception can be used a member must consider the specific circumstances and decide whether there are additional factors that may make it inappropriate for him to rely on this paragraph, ie in effect apply the ‘prejudicial’ test ⁽³⁾. If so the exceptions would seem to have no real significance.

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1. *Richardson and Orme v North Yorkshire County Council CA 2003 19.12.03*
 2. *Para 10(2) Schedule 1. The Local Authorities (Model Code of Conduct) (England) Order 2001.*
 3. *SBE Bulletin 13.*

6.3.7 The position in Wales is different in several material respects:-

6.3.7.1 The definition of a personal interest which would require to be declared refers to the member who ‘anticipates’ that a decision on it might reasonably be regarded as likely to benefit or disadvantage himself, a member of his family, a friend or someone with whom the member has a close personal relationship. The word ‘anticipates’ suggests a subjective test. The ‘members family’ is not defined in the Welsh Code and this may be compared to the English Code where “relatives” are extensively defined to include, for instance, the spouse or partner of a niece or nephew.

6.3.7.2 Members have an automatic personal interest in a matter where that relates to another relevant authority of which they are a member, a body in which they hold a position of general control or management, or a body to which they have been appointed or nominated by this authority as a representative ⁽²⁾. However, Para 16 of the Welsh code enables the member, having declared the existence and nature of the personal interest, to remain and speak at the meeting but not vote. By way of comparison in England such interests would be personal and require to be registered and the existence and nature of the interest must be declared, but the member would be able to remain and speak and vote unless the interest amounted to a ‘prejudicial’ interest (see above) which would require him to leave the meeting room. The difficulties in England in applying the exemptions in Para 10.2 have been referred to above. On the face of it in Wales a member who was a member of another authority could speak (but not vote) at a meeting at which contractual matters between the two authorities were being considered.

6.3.7.3 A member who has a financial interest in any matters through his employment, self employment, partnership, investments in corporate bodies, land ownership etc or are members or have general control or management in private clubs or societies, companies or charities etc must declare the existence and nature of the interest at a meeting and withdraw. In England withdrawal would depend on satisfying the 'personal' and the 'prejudice' tests.

6.3.7.4 Any other personal interest apart from those referred to in Paragraphs 6.3.7.2 and 6.3.7.3 above must be disclosed together with the nature of the interest, then withdraw if satisfying a test not dissimilar to the 'prejudice' test in the English Code ie is the interest such that an objective member of the public ".....might reasonably conclude that it would significantly affect the member's ability to act purely on the merits of the case and in the public interest"⁽²⁾ the words underlined suggest a reasonably high threshold at which the member would be obliged to withdraw from consideration and might be compared with the English Code:-

"..... would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest".

6.3.7.5 The Welsh Code reminds members they may seek advice from the authority's Monitoring Officer.

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1. *Para 12 The Conduct of Members (Model Code of conduct) (Wales) Order 2001.*
 2. *Para. 16 (3) The Conduct of Members (Model Code of Conduct) (Wales) Order 2001.*

6.3.7.6 In the Welsh Code three matters are required to be disclosed and registered which are not in the English code namely:-

- (i) any visit outside the UK for which the authority has paid or will pay.
- (ii) membership of a position of general control or management in a private club or society, such as the Freemasons, a recreational club, working mens' club or private investment club. It is believed this category of interest was not included in the English Code because it was considered to interfere with rights to privacy under Article 8 Human rights Act 1998.
- (iii) any land in the authority's area in which a member of the member's family has a beneficial interest.

6.3.8 The provisions in the Scottish Code in relation to declarations of interest are different again to England and Wales. Interests which are required to be registered, ie financial and non-financial interests are similar to the requirements in England and Wales although the Committee may wish to note the following differences:-

- (i) It is an additional obligation in Scotland to register directorships held which are not themselves remunerated but where the company in question is a subsidiary of, or a parent of, a company in which the member holds a remunerated directorship.⁽¹⁾

1. *Para. 4.12 Code of Conduct for Councillors.*

- (ii) In Scotland there is a duty to register assistance towards election expenses received within the last twelve months. In England and Wales this provision is extended to cover “.....elections or any expenses.....” incurred in carrying out duties and with no time limit ⁽¹⁾.

- (iii) In Scotland the duty to disclose contracts with the Council includes a company in which the member is a director whether remunerated or not ⁽²⁾. The duty relates only to contracts which are not fully discharged. This latter point is not clear in England and Wales.

- (iv) Registration of non-financial interest includes membership of clubs, societies and voluntary organisations ⁽³⁾. A specific test is applied describing non-financial interests as:-

“..... those which members of the public might reasonably think could influence your actions, speeches or votes in the Council”.

6.3.9 Any interest which is registerable must be declared as must financial interests which are not registerable eg employment providing professional services to a person whose interests are a component of a matter to be dealt with by a Council Committee.

6.3.10 Non-financial interests comprise (a) those registered, (b) those bodies to which a member is nominated or appointed to serve by virtue of his office as councillor, (in the latter circumstances the Code does not seek to exempt the member from participation but requires him to declare unless the nature of the interest is

1, 2, 3

Paras. 4.17, 4.15 & 4.21 The Councillors Code of Conduct.

irrelevant or without significance). (c) Private and personal interests such as

service or association with bodies, societies and organisations must be declared unless the interest is irrelevant or without significance.

6.3.11 The Scottish Code also requires a member to consider declaration of financial and non-financial interests of his spouse or co-habitee the test being whether a member of the public might reasonably think the interest might affect his responsibilities as councillor ⁽¹⁾. The Code also refers to the interests of relatives and close friends which may have to be declared. The Code deliberately does not attempt to define “relatives” and “friends” unlike the English Code which defines “relatives” extensively. The Welsh Code does not define the “..... member’s family or a friend.....”

6.3.12 In each of the Codes in England, Scotland and Wales both the existence and the nature of the interest must be declared at the meeting. In Scotland the effect of declaring a financial interest has the effect of prohibiting any participation in discussion or voting and requires the member to leave the meeting room. The ability to participate in the business of a meeting having declared a non-financial depends on whether:

“.....a member of the public acting reasonably would consider that you might be influenced by the interest in your role as councillor and that it would therefore be wrong to take part in any discussion or decision making”.

1. *Paras. 5.12 & 5.13 Councillors Code.*

6.3.13 Any interest at all whether financial or non-financial to be declared at a meeting of a planning committee in Scotland requires the member to refrain from taking part in the consideration of the application.

6.3.14 In summary the Committee may wish to note the following main differences between the Codes in declaration of interest:

- The effect of declaring a financial interest in Scotland automatically prohibits further participation ⁽¹⁾.
- The duty to apply the principles relating to declaration in Scotland extends to dealings with officers, at meetings with other councillors including party-group meetings ⁽²⁾. This is not the case in England and Wales although members with a 'prejudicial' interest in England must not improperly seek to influence a decision about that matter. No such similar provision applies in Wales.
- The duty to withdraw from the meeting room applies in England only if the "prejudicial" test is satisfied. In Scotland it is automatic in relation to a financial interest and dependent on the "reasonable outsider" test in relation to non-financial interests (but NB the special position relating to the planning committee in Scotland). In Wales the duty to withdraw is dealt with in a graduated way and depends on whether the interest is registerable or relates to certain outside bodies, or other personal interests.

1 & 2 Paras 7.11 and 5.4 Councillors Code.

6.3.15 In broad terms the rules in this respect in comparison to England are more strict in Scotland especially in relation to financial interests and any interest at planning meetings, and, more strict in Wales where participation in relation to membership of outside bodies prohibits voting and in relation to registerable interests automatically requires withdrawal from consideration. In England all these questions depend on the “prejudicial” test, where there is a continuing uncertainty in relation to the intended exceptions ⁽¹⁾ and is becoming increasingly difficult to interpret.

6.3.16 The Committee may wish to consider the following questions:-

- Are the current rules too strict in requiring members to withdraw from meetings?
- Should there be greater freedom for members to represent their constituents notwithstanding personal interests?
- How best should a freedom to participate in business be given to members who are members of outside bodies appointed or nominated by their authority?
- Should there be an obligation in England to register and declare membership of clubs and societies, private or otherwise?

6.3.17 The attached table in broad terms shows the principal variations within the UK in dealing with declarations of interest.

1. *Para. 10(2) Schedule 1. The Local Authorities (Model Code of Conduct) (England) Order 2001.*

STATUTORY PROVISION	ENGLAND	SCOTLAND	WALES
Declarable interests.	Registered financial and other interests (Paras. 14 & 15 of the Code). Personal interests . (Para. 8 Code)	Registered financial and other interests (Section 4 code) Financial and non financial interests. (Section 5 Code)	Registered Interests. (Para. 19 code) Personal interests. (Para. 11 code)
Withdrawal from meetings.	If within “prejudicial” test and not exempted by Para.10(2) and no dispensation granted by Standards Committee	If financial must withdraw. No consideration at Planning committee if any interest at all. Otherwise the “reasonable outsider” test. NB. Dispensations may be granted by Standards Commission.	If registered personal interest must withdraw. Interests relating to certain outside organisations may speak but not vote. All other declarations subject to the “reasonable outsider” test.
Application of rules to meetings other than Council and Committees.	No, but NB duty of member with prejudicial interest not to improperly influence a decision to which the interest relates.	Yes to meetings with officers, councillors and party group meetings, and, informal/formal meetings where representing your Council. (Para.5.4 Councillors Code).	No.
Application of rules to private life.	Yes, ie duty not to bring office or council into disrepute, nor to use position improperly to secure advantage or disadvantage for any person. Also, arguably misusing confidential information.	No, save in some measure in relation to principles.	Yes, in relation to the duty not to commit criminal offences, nor bringing Council or office into disrepute, nor, improperly securing advantage or disadvantage for any person.

6.4 RESPECT FOR OTHERS

6.4.1 There are a number of subtle differences in the way each of the three codes deals with the duty to have respect for others. This duty was not, at least directly, embraced within the Committees' Seven Principles of Public Life. The widest duty is in the English code which requires members "..... to treat others with respect," . This all embracing duty covers not only officers and colleague members but contractors, external bodies and those holding public office as well as members of the public generally. The general conduct rules in Scotland refer only to a duty to respect employees and the role they play and to treat them with courtesy. The Scottish principles (which form part of the code) also refer in similar terms to other councillors and consequently extends the obligation accordingly. Additionally, the Scottish code incorporates a detailed Protocol for relations between Councillors and employees. Such protocols are not incorporated in the Code in England or Wales but many authorities have them as local protocols (along with a range of others eg, gifts and hospitality and planning). The Welsh Code in a rather similar fashion to the English, refers to the duty to "..... show respect and consideration for others....."

6.4.2 In all three cases the duty relates to conduct in a members' official capacity.

6.4.3 Whilst it is true that there is a particular need to emphasise the importance of the working relationship between members and officers, and for that matter between members in the decision making process, should not such standards apply generally?

6.4.4 Should there be a recommendation that (a) national recommended codes for this and similar matters should be drawn up rather than reliance on the existing piecemeal approach and that (b) such codes be incorporated within authorities'

main codes rather than be left outside them as generally happens in England and Wales?

6.5 GIFTS AND HOSPITALITY

6.5.1 The rules on acceptance of gifts and hospitality are more strict in Wales and Scotland than they are in England. The English Code simply requires members to notify the Monitoring Officer within 28 days of receiving any gift or hospitality the existence and nature of that gift or hospitality if it is over the value of £25. Nothing is said about cumulative gifts over a period of time nor anything about gifts or hospitality offered but refused. Additionally the rule relates to receipt by the member, not his spouse or co-habitee or another member of his family.

6.5.2 In Scotland the rules are significantly different. They emphasise that members must not ask for gifts ⁽¹⁾ or hospitality and generally advises that all gifts or hospitality should be refused unless they are trivial, inexpensive seasonal gifts, normal and appropriate hospitality associated with duties and any gifts received on behalf of the Council. It would be a breach of the Scottish code to accept any offer by way of gift or hospitality which could give rise to a reasonable perception that it could influence a members' judgement. The acceptance of repeated hospitality is prohibited as is the acceptance of offers to attend social or sporting events unless these are part of the life of the community or where the council would expect to be represented. Any gifts or hospitality must be recorded by the Council and be

1. *The term 'gifts' in the Scottish Code is defined as including benefits such as relief from indebtedness, loan concessions or the provision of services at a cost below that generally charged to members of the public.*

available for public inspection. Gifts of the nature of those underlined in this paragraph above are not required to be registered ⁽¹⁾ .

6.5.3 The rules also require a member to consider whether there may be any reasonable perception that any gift received by his spouse or co-habitee, or company in which he has a controlling interest or partnership in which he is a partner can or would influence his judgement.

6.5.4 The Welsh Code prohibits the acceptance of gifts, hospitality or material benefits or services by a member for himself or for any person with whom he is living which might reasonably appear as placing a member under an improper obligation.

6.5.5 The Monitoring Officer must be notified of any gifts, hospitality, or material benefits or advantage received by the member or to any member of the members' family to his knowledge from any body or person which relates to their position as a member exceeding an amount set by the authority.

1.. *Para. 17 Guidance Note to all Local Authorities in Scotland – Standards Commission 31 March 2003.*

6.5.6 The Committee may wish to consider the following questions:-

- (a) Is it reasonable to extend the requirement to notify gifts and hospitality
 - (i) to members of the members' family?
 - (ii) to companies and partnerships?
 - (iii) to refusals?

- (b) Is the £25 threshold in England too low? (cf. Position of M.Ps.) Would it be best left to the discretion of individual authorities as in Wales?

- (c) Is there a case for removing altogether the requirement to register gifts and hospitality?

6.6 **CO-OPTED MEMBERS**

6.6.1 It is worth observing that in England as in Wales, the Code of Conduct embraces both elected members and voting co-opted members ⁽¹⁾. Non voting co-opted members can have as much influence at committee meetings as voting co-opted but they are excluded. In Scotland the Code does not cover co-opted members at all whether voting or non-voting.

6.6.2 Should all co-opted members, whether entitled to vote or not, be obliged to observe the Code of Conduct?

1. S.49 (7) *Local Government Act 2000*

6.7 CONFIDENTIALITY

6.7.1 The English Code prohibits the disclosure of information given in confidence or acquired (in the belief it is confidential) without the consent of a person authorised or required to do so by law. The misuse of confidential information in this way must be undertaken other than in a member's official capacity. The English code in this respect only refers to conduct in a members official capacity.

6.7.2 A similar provision applies in Wales save that it does not cover information 'acquired' as opposed to given, ie a leak of confidential information that was not requested or information that a member stumbles upon. The Scottish code has a softer reference to the need to treat information received from the Council as confidential where the Council so requires ⁽¹⁾.

6.7.3 In England the percentage of allegations relating to misuse of confidential information is believed to be small. If true perhaps this implies that either the incidence of misuse is in fact relatively low or possibly that hard evidence is difficult to come by. Arguably in England and Wales misuse of confidential information could apply also to information received other than by or from the Council, eg a constituent.

6.7.4 Should the rules on use of confidential information apply to confidential information received or acquired from whatever source by a member in his official capacity or otherwise?

1. *Para. 3.15 Code of Conduct for Councillors.*

6.8 APPOINTMENTS TO OUTSIDE BODIES

6.8.1 The English Code provides that a member who acts as a representative of his authority on another relevant authority must comply with that authority's code of Conduct. On any other body as a representative he must comply with his authority's' Code unless to do so would conflict with his lawful obligations to that outside body.

6.8.2 In Wales this position is extended by a provision in the Code requiring members who are appointed to another body, but not arising from the members' position as a member of the authority, to have regard to the general principles of conduct and the requirement not to bring the office of the member or the authority into disrepute. This is an interesting extension of the Code into the private lives of councillors and raises the question as to whether it is a justified invasion.

6.8.3 The position in Scotland is similar to that in England save that it is not so clear in terms of lawful obligations to the external body.

6.9 THE PROMOTION OF EQUALITY

6.9.1 The English code simply requires members to promote equality by not discriminating unlawfully against any person. No specific reference to equality is made in the Scottish Code. In Wales however it is quite robustly stated requiring members to carry out their duties and responsibilities ".....with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion....."

6.10 EXPENSE AND ALLOWANCES CLAIMS

6.10.1 Both the Welsh and Scottish Codes require members to observe the Council's rules for the payment of expenses and allowances. No such provision is included in the English Code.

6.10.2 *Are such provisions really necessary? Is it sufficient in terms of public confidence for such matters to remain with internal and external audit and references to the police in cases of fraud?*

6.11 PERSONAL DECISION MAKING BY MEMBERS

6.11.1 The Welsh Code has an interesting provision which is absent in the English and Scottish Codes extending the rules on personal interests and declaration to a member exercising personal delegated authority where a member of the public might perceive a conflict of interest between the role of the member on behalf of the council and the members' role in representing his constituents. In such cases the member must disclose the existence and nature of the interest and withdraw from involvement in the decision. If this principle is correct then arguably it should be extended to any member participating in a decision where his constituency interests colour his judgement of the interests of the Council as a whole !

6.12 DISPENSATIONS

6.12.1 The rules of the granting of dispensations vary between Scotland, Wales and England.

6.12.2 In England dispensations may be granted by the Standards Committee of a local authority on written application where more than 50% of the decision making body is disabled from participation or where it is necessary to maintain the rules of political balance ^(1 & 2). In Scotland dispensations may be granted on application by individual members by the Standards Commission in very limited circumstances. General dispensations have been granted in relation to council house tenants and membership of certain outside bodies.

6.12.3 In Wales Standards Committees have significantly greater scope for granting dispensations⁽³⁾. This includes the grant of dispensations where:-

- (a) the nature of the interest is such that public confidence in the conduct of business would not be damaged by participation.
- (b) the interest is common to the member and a significant proportion of the general public.
- (c) participation by the member is justified in view of his particular role or expertise.
- (d) a member is a member of a voluntary organisation otherwise than as a representative of the authority and the business relates to the finances or property of the organisation where the member has no other interest in the business a dispensation to participate but not vote may be granted.

1. *Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002.*

2. *LGHA 1989 S 15(4)*

3. *The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001.*

7. AREAS OF UNCERTAINTY

7.1 Multifaceted complaints and the inherent functions of Local Authorities to act to maintain internal administration.

7.1.1 There is a lack of clarity as to how local authorities should proceed to deal with matters which relate in some measure to a failure on the part of a member(s) which has been referred to the Standards Board but which also raises more pressing issues locally. For instance, an alleged failure by a member of the Planning Committee to declare an interest which was prejudicial and a failure to withdraw from the meeting. A decision to grant planning permission may have been by a majority of one. Should the planning certificate be issued? That question can only be answered by an enquiry into the circumstances without delay and a judgement reached. It certainly could not wait for several months for the completion of an investigation by the Board into the alleged failure by the member. Section 61 (4) LGA 2000 permits local authorities to take action during the carrying out of an investigation but guidance is needed as to how those matters might be handled in a way which protects the interests of the authority but does not pre-empt any conduct investigation nationally.

7.1.2 Finally the case of R v Broadland DC ex parte Lashley C.A 2000, which just predated the Local Government Act 2000, for the first time confirmed that local authorities have an inherent function to act to maintain their internal administration. On the face of it this function is not superseded by the new ethical framework and some guidance is required as to how it may be used in a way which does not interfere with statutory duties rights and procedures.

8 TRAINING AND EMBEDDING HIGH STANDARDS

- 8.1** Standards Committees in England have a statutory duty to arrange training for members and it is part of that responsibility to ensure that such training in ethical standard matters is offered through the offices of the Monitoring Officer. However, whilst authorities have generally offered to all members a training session designed to cover their basic needs in terms of compliance with the code, there are few known examples of this being followed up in terms of the significant numbers who did not attend. This could be remedied by greater encouragement from the Chief Executive or, more suitably, by political group leaders who have not always felt able to give this subject much priority. It is easy for new members joining the Council perhaps via a bi-election to be overlooked although new members starting as a result of regular elections are usually properly catered for.
- 8.2.** There is no nationally approved training programme and a mixture of in-house and external training is a common feature. However, the need to keep members, even sometimes of Standards Committees, well informed of the developing scene in ethical standards once initial training is complete is sometimes overlooked. The innovation of an annual, well presented update report would help to fill this gap.
- 8.3** In terms of conducting hearings, training for Standards Committee members in the fine art of performing this role well is spasmodic and there is no publication available to assist with this. This is particularly unfortunate given that members of Standards Committees likely to sit fairly frequently because of the number of parishes under their jurisdiction will probably sit as regularly as some members of the national case tribunals. At the other end of the scale, current statistics suggest that a significant proportion of Standards Committee members will hardly every conduct a hearing. Is there not a case for reviewing current arrangements to ensure that no members should sit on such a hearing until they had attended an

approved training session? Should not also the current jurisdictional arrangements be changed to ensure that members sitting on such hearings do so with a reasonable degree of frequency sufficient to build up expertise and inspire confidence in the respondent member and the wider public that the hearing will be conducted to a high standard?

8.4 It has become apparent to many authorities that one of the best forms of training is to provide practical examples of how the various ambiguities and scope for differing interpretation of some paragraphs of the Codes of Conduct can be applied to hypothetical situations in which members may find themselves. Similarly a quiz designed to test knowledge of how the various paragraphs can be relevant in various situations has proved a good way of extending understanding, knowledge and awareness. In terms of conducting hearings, a mock hearing exercise has been used to good effect by some authorities prior to receipt of details of an actual hearing. Such a practice gives first hand experience of the problems prone to arise and helps to avoid them at the first few real hearings whilst members are gaining experience.

8.5 Attempts to embed the ethical framework into the routine thinking and practice of authorities have had a reasonably good response where tried. However, the subject has yet to be perceived as a priority by some authorities and this has not been helped by the slow progress made by Central Government in bringing the whole of the framework into effect and it still not being complete. A positive indication is that most members and officers surveyed recently have a clear understanding that the ethical framework and need for high standards of conduct is a responsibility of all members and officers and cannot just be left to the Standards Committee and the Monitoring Officer. However, there is little evidence that knowledge of the ethical framework and the role that officers can play reaches

down beyond the most senior officer levels in the organisation and this does not assist in terms of members who interact occasionally with less senior officials. Some authorities refer to the ethical framework in their induction sessions for new staff but the subject has tended to slide in the order of officer priorities due to a delay in drafting a new officer Code of Conduct; once finally published this document may act as a catalyst for promoting the importance of the topic in a more widespread way.

- 8.6** Only a relatively small number of authorities have had the courage to take up the challenge of engaging an external organisation to carry out an ethical governance audit but those who have found the exercise very useful and a good way of developing best practice, improving standards and efficiency, profiling the topic and developing the role of their Standards Committees. Some authorities have carried out a less extensive internal review of their constitutions to ensure they are kept up to date with developing practices and are amended to assist with problem situations that arise.
- 8.7** The absence of any specific obligatory duties to support the generalised functions of standards committees in the legislation often tends to a low profile and sometimes almost non-existent role for standards committees in authorities which are obliged, or have volunteered, to have one. Equally the absence of any statutory duty to report annually to full Council on how these functions have been performed has led to a lack of engagement with the importance of the wider aspects of this topic amongst many members and officers of authorities.

9. PLANNING

- 9.1** There is a view often expressed that the new ethical framework has made members reluctant to serve on planning committees. This stems in part from the wording of the codes which are often interpreted in a way which means the local representative member feels obliged to declare an interest and take no part in the matter at a time when his or her local constituents are looking to their local member to campaign vigorously on their behalf and vote accordingly. Thus the ethical framework arguably undermines the very essence of local democracy in a way which local people find difficult to comprehend or support; this has led many to conclude that it is better to have as their local councillor someone who does not live in the individual constituency – a result which is by no means desirable on a general basis.
- 9.2** This issue is sometimes confused with the need for decision taking councillors on planning and similar matters to keep an open mind and avoid fettering their discretion – a concept which is based on common law and does not stem directly from the new codes. This situation arises also in the context of development control authorities consulting with parish councils and local interest groups and leads to a variety of views; some suggest that the codes should be less stringent in this regard whilst others demand a commonality of approach and the need for the local member to stand aside, reflecting the overriding emphasis placed on transparency, integrity and accountability.
- 9.3** The “problem” is not assisted by the plethora of varying advice and practices which have developed. There is no uniformly adopted planning code of practice in England or Wales which covers comprehensively all the various foreseeable difficulties; this contrasts with Scotland where such a code of practice is incorporated in the national Code of Conduct. Not only does this make binding the

processes and practices laid down but it aids clarity and understanding. It is also more efficient than having several hundred officers in all the various authorities in England and Wales compiling individual drafts for deliberation and approval by their own authorities each of which appear to differ from one another to reflect local viewpoints or circumstances. These differing codes are not part of the binding code adopted by each authority in England and Wales, although, given the high profile and controversy often attached to planning matters, there is a strong case for putting them on a par with the main general code adopted. Whatever difficulties such an approach may bring, they appear to have been met successfully in Scotland on this issue. The same arguments apply inadvertently to aspects of the Scottish code which for example includes a comprehensive set of provisions on member officer relations, use of authority.

- 9.4** The variety of practices and resulting confusion is unintentionally worsened by other bodies producing their own codes and advice in recent years, eg the Ombudsman for Local Government, the Local Government Association, the Royal Town Planning Institute and the National Association of Local Councils have all produced differing, but often broadly similar documents on this topic. What is undoubtedly needed is a national commitment to producing one respected comprehensive document which can be seen as raising and maintaining standards and be binding on those affected by it.

10. QUESTIONNAIRE CONSULTATION

We have attached to this paper an analysis of responses to the questionnaires in the appendix. The replies are divided into those from Monitoring Officers and Standards Committee chairmen in England (some based on careful deliberations by Standards Committees), Monitoring Officers in Scotland and Wales, and a sample of clerks of parish and town councils in England.

ANNEX 1

INTRODUCTION & BACKGROUND

The Institute has been invited to assist the Committee in highlighting the differences, issues arising and lessons to be drawn from the implementation and the enforcement of Codes of Conduct across the UK for members of local authorities and other public bodies. The Better Governance forum (BGF) is part of the Institute and was launched three years ago and aims to positively influence and support the drive to achieve better governance in public services. Membership of BGF includes over third of all principal councils in England and many public bodies including government departments.

This report looks firstly in broad terms at the background to the drive for higher standards of conduct in the public sector culminating in the Committees' Third Report in July 1997 and the different responses and approaches to that Report in developing a new ethical framework in Scotland, Wales and England. Secondly, through examination of the different statutory backgrounds and guidance issued questions are raised designed to assist the Committee in examining the implementation of the new ethical framework and whether in practice it has become disproportionate in terms of the balance between process and outcome, and between detailed enforcement and its effect on democratic representation.

In 1975 a National Code of Local Government Conduct was issued as a guide for all councillors elected or co-opted to local authorities in England, Wales and Scotland. This Code covered a range of conduct issues including public and private interests, disclosure of interests, use of confidential information and gifts and hospitality. The Committee of Inquiry into the Conduct of Local Authority Business in 1986 (chaired by David Widdicombe QC) made recommendations designed to strengthen the democratic process at local level against a background of increased party politics and uncertainty about the

relationship between the majority and minority parties and between councillors, officers and the public they serve. Within a wide range of recommendations it recommended that the National Code should be prescribed statutorily and that breach of its provisions should constitute prima facie maladministration. Additionally it recommended that individual councillors should be required to have regard to the Code and promise to do so as part of their statutory declaration on accepting office. It recommended that councillors should withdraw from the room when they have declared a pecuniary interest. The declaration of non-pecuniary interests would enable a member to remain, speak and vote unless the interest was clear and substantial. These particular recommendations were reflected in a revision of the Code published in 1990. Monitoring Officers were required to be designated in each principal council to report on breaches of the law or maladministration (S.5 Local Government and Housing Act 1989). The Local Government Ombudsman was able to conclude, following an investigation that maladministration by an individual councillor constituted maladministration by the Council as a whole.

The Third Report of the Committee on Standards in Public Life (then chaired by Lord Nolan) concerned standards of conduct in local government in England, Scotland and Wales. In reporting to the Prime Minister Lord Nolan emphasised:-

“Despite instances of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct. The number of people who have used their position in local government for their own ends is small compared with the vast majority who genuinely wish to serve their community”.

The Committee recommended a fresh start replacing the confusing mixture of rules with local authorities being given greater responsibility to devise and regulate standards (via Standards Committees) within national principles and a strong and national system of external scrutiny (via Local Government Tribunals).

The Government broadly accepted these proposals but the problems of a few high profile local authorities caused it to move away from the local development of Codes and regulation through Standard Committees to the establishment of national structure with an independent external body to issue advice and to investigate and a separate Adjudication Panel to hear and determine cases referred to it. It is interesting to note in paragraph 1.12 of the White Paper published in 1998 ⁽¹⁾ . (A commitment to “simple arrangements” for parish councils, recognition of the importance of speed in both investigation and adjudication and the implication was that all less than “serious” allegations would be investigated and adjudicated locally):-

“We are, however, clear that we will establish a new framework of standards for local authorities (Other than Parish councils for which we envisage simpler arrangements) where:-

- every council will be required to introduce its own code of conduct for councillors, based on a national model,
- there will be arrangements for the investigation of all allegations of malpractice and wrongdoing,
- for all serious allegations the investigation will be independent, and
- all investigations will be as rapid and thorough as fairness to individuals allows, and their findings will be quickly acted upon”.

(1) *Modernising Local Government – A New Ethical Framework. DETR 1998.*

In 1999 the Government published a draft Local Government (Organisation and Standards) Bill which was the subject of consideration and recommendations from a Joint Committee of both Houses of Parliament. The Joint Committee reported in July 1999 and inter alia recommended:-

- That Standards Committees should contain more/a majority of independent members.
- That Standards Committees should fulfil a sifting role before forwarding to the Standards Board.
- That consideration is given to circumstances in which an expedited procedure might be instituted for serious cases”.

The Joint Committee also indicated:-

“Possibly the most important point made was the danger of overload by vexatious and trivial complaints”.⁽¹⁾

“We think that much more use could be made of local standards committees in the screening of complaints at local level. But for this to be possible, the committees should be seen to be independent of the executive whose decisions will, in the main, be those complained of. And they should have a greater number of independent members”.⁽²⁾

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1. *Para 214 Report of the Joint Committee on the Draft Local Government (Organisational Standards) Bill HL paper 102 – 1, HC 542 – 1.*
 2. *Para 210 Report of the Joint Committee on the Draft Local Government (Organisational Standards) Bill HL paper 102 – 1, HC 542 – 1.*

The Governments' response to the Joint Committee's Report was published in December 1999 ⁽¹⁾. In particular it indicated an unwillingness to require Standards Committees to have more independent members. In relation to the recommendation that Standards Committees should exercise a sifting role the Government said:-

“The Government does not agree that standards committees should fulfil a sifting role in determining whether a complaint should be forwarded to the Standards Board. The Government considers that it is vital for the Standards Board to provide that role, both to secure a consistent approach nationally and to provide the degree of independence the public expects. The Board will be resourced to undertake this role effectively”. ⁽²⁾

References are made later in this report to issues concerning the sifting of complaints, vexatious and frivolous complaints, and the decision to introduce Parish Councils fully into the national framework.

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1. *Government Response to the Report of the Joint Committee on the Draft Local Government (Organisation and Standards) Bill CM 4529.*
 2. *Para 3.17 Response to the Report of the Joint Committee on the Draft Local Government (Organisation and Standards) Bill CM 4529.*

ANNEX 2.

SUMMARY RESPONSES TO SURVEY:

‘A’ Principal Councils in England

<p style="text-align: center;">RESPONSES TO IPF BETTER GOVERNANCE FORUM QUESTIONNAIRE ON LOCAL AUTHORITY CODES OF CONDUCT FROM PRINCIPAL AUTHORITIES IN ENGLAND</p>
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- Q1** In what ways (if any) has the new ethical framework improved public confidence and trust in Local Authority elected representatives?

A majority felt that the new ethical framework had not improved public confidence and trust in Local Authority representatives – or at least that there was no evidence that it had – but some acknowledge that its mere introduction provided some degree of reassurance and considered that it was still too early to say until it became better known. Some felt that the Standards Board could do more to publicise its existence.

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

Most felt that the new regime had had little, if any effect, except in some cases for a small number of parish councillors not standing again and in some of those cases there had actually been an increase in candidates due to their predecessors' demise. Views expressed that the framework was heavy handed particularly re registration of interest and encouraged too many trivial complaints over which members had no redress. Some members found the compulsory whistleblowing duty to be off-putting. Another view was that the Code for Parish Councillors had raised their status and their work whilst others felt it was seen as over bureaucratic.

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

A clear majority were in favour of such a change, particularly as it would better clarify the basis of the Code and explain some of the more cumbersome provisions.

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

The answers revealed serious concerns about the perceived inadequacies of the present position. Suggestions included:

- *A new national compulsory code attached to the main one to replace the existing plethora of advice from various quarters.*
- *Clear guidance on SBE's website particularly re councillors on more than one tier of authority.*
- *Greater appreciation of the need to accommodate members who stood for election based on a particular point of planning view which the public subsequently sees as disenfranchised from representing it properly.*
- *More guidance (with specific examples) on the difference between a personal and a personal and prejudicial interest.*
- *Clarification of when it would be appropriate to ask another member to represent your constituents' views.*
- *A brief national publication which explained to people lobbying councillors the limitations on their role and which could be distributed accordingly.*
- *More guidance on making representation, attending public meetings, participating in public meetings, meeting officers etc.*
- *More content in the Code, rather than by way of guidance, about some of the above.*

Q5 Does the Code unreasonably restrict members with personal interests from representing constituents' views at Committee?

There was a fairly even balance of opinion.

Some of those saying 'no' felt that there was a general assurance that involvement in public life increasingly meant that personal interests had to be subjected to the perceived public interest.

Another view was that there should be a facility for a member to represent both their own personal interests and those of constituents at committee; where this happens, members should be under a duty to ensure that the views of those who take a contrary position to their own view, are relayed to the committee through another member or through an appropriate chief officer.

A further view was that members should be able to speak and vote unless their particular personal interest is such that approval of the proposal being considered would lead to their financial gain, or loss, if it were approved. Where a member's interest arises from membership of a lobby group or similar body then, as long as that is declared, greater scope for participation may be beneficial. Where, for

example, a member has been elected as part of a campaign, eg to keep open a public facility or oppose a change, views have been put that (with the exception of planning applications) the public would not generally see participation in meetings by that member as damaging to local ethical standards.

Responses to this question again pointed to the public perception that they were left unrepresented in such matters on occasion with little justification.

Q6 Should Parish and Town Councils be part of the Ethical Standards legislation?

There was an almost unanimous view that Parish and Town Councils should continue under the present arrangements with some responses pointing to the need for all "councillors" to be covered, the role of Parish Councillor in planning matters and the prospect of Parish Council power being enhanced rather than diminished. One Council felt there might be a case for a slightly less stringent approach in the case of smaller Parishes.

Q7 In what ways (if any) could the mandatory code be simplified in respect of Parish and Town Councils?

Most responses were against any simplification although some thought there should be less restriction on personal interests and a fresh look at smaller Parish Councils. One view highlighted the perceived need for a general exemption to Parish Councillors who are on bodies running community facilities, particularly where most Parish Councillors were on such a body.

Q8 What (if anything) is achieved by applying some parts of the national code to members when acting other than in their official capacity eg 4 (bringing office into disrepute) and 5 (a) (improperly securing advantage of disadvantage).

There was unanimous and often strongly expressed support for these provisions for a variety of reasons; two responses added that examples in SBE guidance might help.

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

There was a fairly large majority view supporting the compulsory whistleblowing provision; reasons given included avoidance of collusion, exposure of misconduct that might otherwise remain uncovered, reinforcement of allegiance to the Council as a whole, prevention of members carrying out own investigation; facilitation of spreading responsibility throughout the authority.

Q10 How could para 7 be improved (if at all)?

Suggestions included providing an option to report to the MO, listing the circumstances in which it applies, amplifying “reasonable belief”, replacing the duty by encouragement.

Q11 How could the distinction between personal, and personal and prejudicial, interests be improved?

Some responses called for the SBE to produce more examples of the distinction between the two in formal guidance as the distinction was not always considered easy to follow. Two suggested that it would be less confusing if the term “personal and prejudicial” was replaced simply by “prejudicial” but others felt it best to leave it as it is.

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

Nearly all responses were against this although the point was made that the public register appears hardly ever to be looked at. Another view was that registration should be extended to membership of all clubs etc in the authority’s area. On the other hand, the need to register membership of a political party was seen as superfluous and mention was made of the time consumed in Council meetings by all the declarations which could perhaps be made in advance and circulated with a request for additions on the day. There was also exasperation at the repetitive nature of the declarations when the Council’s internal system required an item to be discussed at two or three different bodies.

Q13 Should the nominal share values referred to in 8 (1) © and 13 (d) – currently £5,000 and £25,000 – be made consistent and if so which should prevail?

There was almost unanimous support for the view that the figures should be consistent with a majority in favour of the larger amount.

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

Whilst several considered no change to be necessary a majority put forward suggestions and comments including:

- *Insert “is employed” or “before” holds a position of general control or management.*
- *Provide examples.*
- *“Influence” would be better.*
- *“General control” too vague.*
- *Too vague and difficult to consume compared with much broader phrase “membership of” in 14.*

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

A large majority thought the definition very clear although some thought it should be supplemented by cousins, step parents, half-brothers and half-sisters. Several responses called for the SBE to issue guidance on “friend”.

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

There was almost unanimous support for this with a few mentioning that it was already done in practice.

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

There was almost unanimous support for this although two referred to the possible administrative problems in recording it.

Q18 Should the register of interests include:

- (a) **membership of all private clubs or societies, such as the Freemasons, a recreational club, working man’s club, or private investment club as in the Welsh Code?**
- (b) **trade organisations in addition to the current professional associations and trade unions?**

There was almost unanimous support for this; two referred to the need for consistency in that some of the bodies referred too were arguably already covered under other headings.

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

A large majority considered the existing provisions to be satisfactory. Suggestions included an increase in the £25, clarification on cumulative gifts, problems of discerning whether gifts and hospitality being offered to members as councillors or in some other capacity, and benefit of recording gifts and hospitality rejected as well as received.

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

Several suggestions were made including:

- *Improve websites by making it possible to search cases by category of breach.*
- *Policy guidance notes on key issues taking into account decided cases.*
- *Apply 10 (2) of Code less rigidly particularly re members nominated by their authority to external bodies and re members belonging to pressure groups.*
- *More flexibility and speed re dispensation grants.*
- *Guidance on lasting effects of interest registrations which have technically ceased but whose effects are still influential.*
- *Provide financial resources to Monitoring Officers asked to be responsible for investigations unless negotiations in force as SBE will have fewer burdens.*
- *Speedier investigations and resolution of complaints.*
- *Abolish the exemption from the definition of prejudicial interest.*

Some responses indicated a wish to allow matters to bed in a little longer before making premature changes.

Q21 Has your local authority

(a) granted its standards committee additional functions.....

(b) indicated it is considering to do so.....

If it has, what are they?

If it has not, is there a reason?

A significant minority of Standards Committees had not been granted additional functions, the main reason being that such a matter had simply not been raised or that it was felt they already had enough to do, or, that the Committee should be kept free from political arena.

Additional functions given to some Standards Committees included:

- *Receipt of reports on probity issues including internal audit reports on probity and some external audit reports.*
- *Advice to the Local Strategic Partnership on probity issues.*
- *Reviews of the constitution and risk management/governance.*
- *Oversight of member training.*
- *Competency training.*
- *Some aspects of discretionary remuneration.*
- *Monitoring of member attendance.*
- *Overview of complaints handling.*
- *Ombudsman reports including power to grant compensation.*
- *Overview of member/employee relations protocol.*
- *Monitoring compliance with CIPFA/SOLACE Code of conduct.*
- *Monitoring Independent Remuneration Panel has carried out its task properly.*
- *Members allowances difficulties.*

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

- (a) Training.**
- (b) Monitoring compliance with the code.**
- (c) Promoting and maintaining high standards of member conduct.**

Examples of how Standards Committees have performed their more general statutory duties included:

- *Update and refresher training for all members.*
- *Programme of training for Parish Councillors and clerks.*
- *Assistance to representative of each political group on Committee to promote standards issues in group meetings.*
- *Induction sessions on standards issues for prospective candidate including Parish Councillor candidates before elections.*

- *Development of planning Code of Conduct and new protocols and ethics guidance.*
- *Joint training events and newsletters.*
- *Publicity about the new ethical framework.*
- *Report on activities re ethical standards in Council's newspaper.*
- *Chairman of Committee reports to full Council on any issues of concern.*
- *Monitoring register of interests.*
- *Commissioning an external ethical governance audit.*
- *Updating code of corporate governance.*
- *Determines annual training programme on ethical standards.*

‘B’ Principal Councils in Scotland

RESPONSES TO IPF BETTER GOVERNANCE FORUM QUESTIONNAIRE ON LOCAL AUTHORITY CODES OF CONDUCT FROM PRINCIPAL AUTHORITIES IN SCOTLAND

Q1 How could the Code of conduct be improved?

- *By making the planning provisions clearer.*
- *By making training on the code compulsory for all members.*
- *By strengthening the provisions relating to members/employee roles.*

Q2 What benefits are derived from having a Standards Committee whether or not they are obligatory?

Although Standards Councillors are not obligatory in Scotland, those who have opted to have one speak positively about them. They refer in particular to its ability to raise the profile of ethical standards and act as a focal point for such issues.

Q3 Are any aspects of the new ethical framework disproportionate to its objectives?

The only aspects of the Scottish code which are seen as disproportionate to its objectives are named as the restrictions on planning and licensing issues.

Q4 Is the balance between internal and external regulation over alleged misconduct by members about right and if not, how could it be improved?

External regulation is favoured although guidance is requested on which matters should be referred to the Commission and which should be dealt with internally.

Q5 Has your authority carried out an ethical governance audit, and if so, what changes were made as a result?

There is no evidence that ethical governance audits have so far received such attention.

Q6 How could the prescribed role of the Monitoring Officer be improved?

By implementing the wishes of the Society of Local Authority Lawyers and Administrators for the statutory framework of the Monitoring Officer role to be strengthened and for some of the roles envisaged to be clarified.

Q7 What changes would you like to see in relation to the role of members in development control matters against the background of the current ethical framework provisions?

- *Greater clarity and more co-ordinated training.*
- *Clarity on which members cannot be on committees dealing with planning.*
- *Appears to be general discontent on planning provisions.*

Q8 Is there any need to refer in the Code of Conduct to the private life of members?

This is not thought to be necessary as minor matters could be dealt with more appropriately internally or by party groups and more serious personal transgression are likely to be covered by the Principles without any need to amplify them in separate provisions.

Q9 How can any provisions about whistleblowing in the code be improved/inserted or should they be abolished?

Responses indicate that many breaches of the code go unreported in any event. Each authority should have its own whistleblowing policy and raise awareness and enforcement practice.

Q10 What improvements would you like to see on declarations of interest provisions?

Disquiet expressed about the lack of clarity in the code on when to declare and the confusion over what is a financial interest and what is not.

‘C’ Parish and Town Councils

RESPONSES TO IPF BETTER GOVERNANCE FORUM QUESTIONNAIRE ON LOCAL AUTHORITY CODES OF CONDUCT FROM PARISH AND TOWN COUNCILS IN ENGLAND

- Q1 In what ways (if any) has the new ethical framework improved public confidence and trust in Local Authority elected representatives?**

The public remain largely unaware of the ethical framework and there is no tangible evidence that public trust and confidence has improved. In smaller parishes the public know their Parish Councillor reasonably well and form a view based primarily on that.

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

A majority thought that some people had been deterred from serving on the Parish Council because of the draconian need to register private matters which would never be affected by council business anyway. One view was that as hardly anyone knew about the new ethical framework it made no difference anyway although others cited the publicity given to councillors' resigning in protest as having had an adverse effect.

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

No views expressed apart from one who considered the whole matter a waste of time and money at parish level.

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

No suggestions made other than concerns over the stringency of the requirements.

Q5 Does the Code unreasonably restrict members with personal interests from representing constituents' views at Committee?

The majority thought it did.

Q6 Should Parish and town Councils be part of the Ethical Standards legislation?

A majority said yes and another thought it could be confined to parishes and towns with the higher levels of precept.

Q7 In what ways (if any) could the mandatory code be simplified in respect of Parish and Town Councils?

By clearer wording and provision of examples.

Q8 What (if anything) is achieved by applying some parts of the national code to members when acting other than in their official capacity, eg 4 (bringing office into disrepute) and 5 (a) (improperly securing advantage or disadvantage).

Very little value was seen in this.

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

There was unanimous support for the compulsory whistleblowing provision and emphasis was placed on the need to promote accountability.

Q10 How could para 7 be improved (if at all).

No suggestions for improvement.

Q11 How could the distinction between personal, and personal and prejudicial, interests be improved?

Most responses expressed concern about the confusion caused. A novel suggestion was that after a councillor had declared an interest, the other councillors should then decide whether it was in the public interest to allow them to participate or not.

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

There was strong support for this although one view was that some interests would be conveniently forgotten.

- Q13** Should the definition of “relative” be improved and if so how?

A majority felt there was a need to simplify the definition.

- Q14** Should the register of interests include:

- (a) membership of all private clubs or societies, such as the Freemasons, a recreational club, working men’s club, or private investment club as in the Welsh Code.
- (b) trade organisations in addition to the current professional associations and trade unions.

A majority were opposed to this.

- Q15** Do the requirements on registration of gifts and hospitality require amendment and if so how?

A majority considered no change was needed.

- Q16** Provide detail of any other ways you think the code or the ethical framework generally could be improved.

There was some support for simplifying the Code but the small size of the return may suggest that the whole subject is no longer of predominant concern at Parish and Town Council level.

