

**A CODE FOR THE FUTURE - A CONSULTATION PAPER ON THE REVIEW OF  
THE CODE OF CONDUCT FOR MEMBERS**

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**Purpose of Report**

1. To seek the views of the Standards Committee prior to the submission of a report to the Council on a consultation paper on the review of the Code of Conduct for Members issued by the Standards Board for England.

**Information and Analysis**

2. The Standards Board for England has issued a consultation paper entitled "A Code for the Future". A copy of the consultation paper and an introduction to it have previously been forwarded to all Members of the Standards Committee but they are **attached** to this report for the sake of completeness and also because the agenda items are circulated to all Parish Councils, who may wish to respond independently to the Standards Board on the content.
3. The Standards Board for England has been asked to conduct the review by the Government, which does not wish to dilute the underlying principles of the existing code but rather seeks to learn from experience of working with it. It is nearly three years since the Code came into force.

**Key areas**

4. The Standard Board for England indicate that the following are the key areas from their prospective :-
  - (a) Public interest defence in relation to disclosure of confidential information.
  - (b) The duty for Members to report misconduct by colleagues.
  - (c) The line between public and private conduct.
  - (d) Personal and Prejudicial Interest.
  - (e) Registering Interest.
5. For convenience it is proposed to set out in this covering report the 29 questions posed by the Standards Board with a short response on each question. The views of the Standards Board are set out on each point in the consultation paper itself. Areas where there has been some difficulty locally will be the subject of fuller comment.

## Questions and Suggested Reponses.

<b>The general principles</b>	
1.	<p>Should the ten general principles be incorporated as a preamble to the Code of Conduct?</p> <p>Response - yes, for the sake of completeness.</p>
2.	<p>Are there any other principles which should be included in the Code of Conduct?</p> <p>Response - no proposals</p>
<b>Disrespect and freedom of speech</b>	
3.	<p>Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?</p> <p>Response - a broad test for disrespect appears to be more appropriate.</p>
4.	<p>Should the Code of Conduct include a specific provision on bullying? If so, is the Acas definition of bullying quoted in the full consultation paper appropriate for this?</p> <p>Response - In the light of a recent case nationally, a specific provision on bullying should be included and it would be useful to have a common definition with Acas on what bullying actually is.</p>
<b>Confidential information</b>	
5.	<p>Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information?</p> <p>Response - releasing confidential information in the public interest should be recognised as grounds of defence to an alleged breach of paragraph 3(a). It creates uncertainty to follow the alternative argument, namely, that a public interest issue should be considered as an argument in mitigation of a breach rather than a distinct defence. Councillors are likely to be unhappy with a situation where this can be raised only by way of mitigation because they will by that point have been found to be in breach of the Code.</p>
6.	<p>Do you think the Code of Conduct should cover only information which is in law "exempt" or "confidential", to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully?</p> <p>Response - yes; any other view would be legally unsound. If an authority has withheld information unlawfully, it should not be a breach to disclose that information.</p>
<b>Disrepute and private conduct</b>	
7.	<p>Should the provision relating to disrepute be limited to activities undertaken in a member's official capacity or should it continue to apply to certain activities in a member's private life?</p> <p>Response - provided that there remains a link between a member's conduct in their private life and the performance of their public office, then the provision relating to disrepute</p>

	should continue to apply to certain activities in the member's private life.
8.	<p>If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged?</p> <p>Response - there is a sound argument that it should continue to be a broad provision as there are issues which can arise over and above matters attracting a criminal sanction which nevertheless bring into question a member's fitness to carry out their official duties as a Councillor.</p>
<b>Misuse of resources</b>	
9.	<p>We believe that the Code should prohibit breaches of the publicity code, breaches of any local protocols, and misuse of resources for inappropriate political purposes. Do you agree?</p> <p>Response - this really follows through the provisions of the Local Government Act 1986 and the Publicity Code issued under that.</p>
10.	<p>If so, how could we define 'inappropriate political purposes'?</p> <p>Response - the definition could relate to providing resources with a view to assisting a Councillor in activities which are purely party political, relating to support for election purposes and activities/meetings which are not open to the public or to any other political party.</p>
11.	<p>Is the Code of Conduct right not to distinguish between physical and electronic resources?</p> <p>Response - there does not appear to be any significant difference between the two types of resource.</p>
<b>Duty to report breaches</b>	
12.	<p>Should the provision of the Code of Conduct that requires members to report breaches of the Code by fellow members be retained in full, removed altogether, or somehow narrowed?</p> <p>Response - as the Code of Conduct as presently worded in this respect is prone to abuse, it would be appropriate to consider narrowing its provisions.</p>
13.	<p>If you believe the provision should be narrowed, how would you define it? For example, should it apply only to misconduct in a member's public capacity, or only to significant breaches of the Code?</p> <p>Response - one reasonable way of narrowing its provisions would be that it should apply only to significant breaches of the Code. That of course does give rise to issues of interpretation but it is not unusual to find words of this kind used in codes or indeed legislation and it is a question of interpretation in any particular case.</p>
14.	<p>Should there be further provision about making false, malicious or politically-motivated allegations?</p> <p>Response - although there have been no local issues of this kind, it would appear from case studies elsewhere that a further provision to deter false, malicious or politically</p>

	motivated allegations would be appropriate.
15.	<p>Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?</p> <p>Response - existing sections of the Code of Conduct and other current legislation cover this adequately.</p>
<b>Personal interests</b>	
16.	<p>Do you think the term "friend" requires further definition in the Code of Conduct?</p> <p>Response - No. The everyday definition applies and guidance has been given by the Standards Board for England which may help in any particular circumstance, as mentioned in paragraph 5.1.3 of the consultation paper.</p>
17.	<p>Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority's area?</p> <p>Response - the personal interest test is a matter of considerable concern at the present time. Members should properly declare a personal interest in matters such as concessionary fares for the elderly where they themselves are over the qualifying age. They should also do so where they have a relative who falls in that category. This is despite the fact that a large part of the population as a whole falls within the category of person obtaining benefit from a concessionary fare scheme. Similar issues arise in relation to education matters. It seems quite unsatisfactory at the moment for Members to have to declare a personal interest in these circumstances.</p>
18.	<p>Should a new category of 'public service interest' be created, relating to service on other public bodies and which is subject to different rules of conduct?</p> <p>Response - this is an interesting suggestion. The rules for Members who serve upon other public bodies should be different from the rules relating to personal interest generally, particularly with a view to encouraging participation and the interchange of information between two public bodies via the contribution of a Member who sits on both.</p>
19.	<p>If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings?</p> <p>Response - this is a reasonable suggestion, although mass declarations have not been an issue in respect of service on other public bodies so far as Darlington Borough Council is concerned.</p>
20.	<p>Do you think paragraph 10(2)(a-c), which provides limited exemption from the prejudicial interest rules for some members in certain circumstances, should be removed from the Code of Conduct?</p> <p>Response - provided that some other workable system can be introduced, then it would be helpful to dispense with the somewhat complicated provisions of paragraph 10(2)(a-c), which are difficult to interpret at the moment, in that that paragraph seems to provide a rather circular provision whereby a Member declares a personal interest, concludes that in normal circumstances it would be a prejudicial interest but because it relates to a public body it <u>may</u> be treated as not prejudicial but then Guidance indicates that the Members still has to consider whether it is a prejudicial interest. That clearly is a difficult system to</p>

	operate satisfactorily. Providing that any new system can provide greater clarity for Members, that would be an appropriate way forward and the existing paragraph could be deleted.
21.	<p>Do you think less stringent rules should apply to prejudicial interests which arise through public services and membership of charities and lobby groups?</p> <p>Response - Yes, although the suggestion set out in paragraph 5.1.15 regarding the treatment of such interests as prejudicial in certain situations is supported. Those situations relate to direct impact on the body concerned and should continue to be treated as prejudicial.</p>
<b>Prejudicial interests</b>	
22	<p>Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?</p> <p>Response - apart from prejudicial interests arising from public service or membership of charities and lobby groups, which is set out earlier in the consultation paper, it would seem that allowing a Member with a prejudicial interest to address the meeting before withdrawing would undermine one of the key principles of the existing Code, namely that the decision making process is protected from influence by Members who have a prejudicial interest and that should include presence at the meeting at any time when that item is being discussed.</p>
23.	<p>Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?</p> <p>Response - agreed that Members with prejudicial public service interests could be allowed to contribute before withdrawing from the vote although there are some reservations about the introduction of yet a further arrangement for declaring interests and leaving meetings. If this were to be introduced there would then be alternative situations whereby firstly a Member declares a personal interest but not prejudicial and stays in the meeting, a second situation where they declare a personal and prejudicial interest and leave the meeting and the new third situation whereby they declare a personal and prejudicial interest but are allowed to contribute to the debate before withdrawing because it is a public service interest. There are concerns about the confusion that may arise.</p>
<b>Registration of Interests</b>	
24.	<p>Should Members employed in areas of sensitive employment, such as the security services, need to declare their occupation in the public register of interests?</p> <p>Response - agreed that that is not necessary, provided that the information is passed to the Monitoring Officers for secure retention.</p>
25.	<p>Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area?</p> <p>Response - the approach suggested by the Board is supported namely that there should be an explicit requirement to register but only in respect of private clubs and organisations within or near the authority's area.</p>

<b>Gifts and hospitality</b>	
<b>26</b>	<p>Should the Code of Conduct require the register of gifts and hospitality to be made publicly available?</p> <p>Response - there is no reason why the register should not be made publicly available and in fact, it would be a positive move in the interest of public confidence.</p>
<b>27.</b>	<p>Should members also need to declare offers of gifts and hospitality that are declined?</p> <p>Response - the rationale for the register itself suggests that offers of gifts and hospitality that are declined should be declared.</p>
<b>28</b>	<p>Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold of declaration? How could we define this?</p> <p>Response - gifts from the same source over a period of time ought to be declared even if individually they are below the financial threshold where in total they amount to significantly more than £25. The definition would need to refer to offers or gifts/hospitality over a set period of time, possibly over a 12 month period.</p>
<b>29.</b>	<p>Is £25 an appropriate threshold for the declaration of gifts and hospitality?</p> <p>Response - although the financial threshold need not be adjusted at this point in time, the Code as at present drafted does tend to give the indication that gifts of any value can be accepted provided simply that they are declared. That is a misleading impression because it clearly is inappropriate in many cases for gifts to be accepted or hospitality received and the declaration of it is irrelevant. Members should not be deluded into thinking that declaring gifts and hospitality equates to a green light to accept such gifts and hospitality. There will be many situations where acceptance is totally inappropriate.</p>

### **Legal Implications**

6. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

### **Section 17 of the Crime and Disorder Act 1998**

7. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

### **Conclusion**

8. There are a number of areas of the existing Code where difficulties have arisen nationally and to some degree locally but the opportunity to comment on the consultation papers is welcomed. Any improvement to the Code which would lead to a better understanding

generally is to be commended.

### **Recommendation**

9. The views of the Standards Committee are requested on the consultation paper generally and in particular on responses to be given on the specific questions posed in the Consultation Paper for further consideration by the Council with a view to a Council response being sent by 17th June, 2005.

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### **Background Papers**

None other than the Consultation Paper attached

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