

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

14 January 2008

**The Standards Board's Case Review 2007**

**0.0 PURPOSE OF REPORT**

- 1.1 To inform Members of the key points from the Standards Board's "Case Review 2007 – The Code of Conduct: Questions and Answers".

**2.0 BACKGROUND**

2.1 The Standards Board's Case Review is an annual publication through which the Board shares its experience of conducting investigations, giving legal advice and developing policy in relation to the Code of Conduct.

2.2 The Case Review is not statutory guidance but is regarded by the Board as a practical advice kit on the interpretation of the Code. Each edition uses case examples drawn from experience to focus on key developments.

**3.0 CASE REVIEW 2007**

3.1 The Case Review 2007 is a substantial document (130 pages) and has not, therefore, been appended to this report. It can be downloaded from the Standards Board's website by using the following link:

[www.standardsboard.gov.uk/Publications/TheCaseReview/](http://www.standardsboard.gov.uk/Publications/TheCaseReview/)

Copies will be available at the meeting for Members of the Committee.

3.2 It is only the second Review to undertake a complete, paragraph by paragraph, analysis of the new Code. Each paragraph is considered through a series of questions and answers and case studies where available. The Board intends to re-issue the Case Review, with its paragraph by paragraph analysis, on an annual basis, to reflect developments in the ethical framework.

3.3 Attached to this report at Appendix 1 is a summary of the key points raised, and guidance given, in the Case Review, for Members' information. Key points from the Summary were disseminated throughout the Authority, along with a weblink to the Review itself, via the latest edition of the Standards Bulletin which was circulated in December 2007.

**4.0 RECOMMENDATIONS**

- 3.1 Members are requested to note this report.

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Background Documents:  
None

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17 December 2007

## SBE CASE REVIEW 2007

### Summary

#### INTRODUCTION

- 20,000 complaints received since original code introduced;
- now, less than a quarter of complaints are investigated;
- trivial, politically motivated and vexatious complaints are rejected quickly;
- there are improved ethical standards: the number of cases which have resulted in sanctions has reduced;
- research showed the benefits of local hearings and investigations to be a raised awareness of the Code and the ethical framework;

#### PARAGRAPH 1: INTRODUCTION AND INTERPRETATION

- “co-opted member” includes independent members of standards committees but does not include members of an independent remuneration panel;
- standards committee independent members can be independent members of more than one authority’s standards committee;
- definition of “appointed member” (new term in model Code 2007): appointed members fall within Section 52(3) Local Government Act 2000, an example being a member who is appointed to a police authority. Appointed members may also fall within the definition of a co-opted member.

#### PARAGRAPH 2: SCOPE OF THE CODE

- the Code applies to all elected members and co-opted/appointed members who are allowed to vote on issues;
- most of the Code’s provisions only apply to activities performed whenever members act in an official capacity (conducting the business of their authority or acting, claiming to act or giving the impression they are acting in their official capacity or representing their authority). If Parliamentary approval is given for amendments to Section 52 Local Government Act 2000, then the intimidation, disrepute and improperly conferring an advantage/disadvantage paragraphs in the Code will also apply to a member at any time where their behaviour has led to a criminal conviction. Behaviour classed as a criminal offence will only be covered by the Code if a member is convicted after they have taken office;
- there are circumstances when it is clear that the Code will usually operate, eg:
  - meetings of the authority, its executive or any of its committees or sub-committees (as this involves carrying out the business of the authority);
  - an individual executive member exercises a delegated power;
  - an individual elected member holds a surgery for residents of their ward (performing the business of the office to which they have been elected);
  - members’ face-to-face dealings with officers about the business of the authority;

- similarly, members of police or fire authorities will be conducting the business of their office when they attend formal meetings with police or fire officers, or make formal visits to police or fire stations;
- the scope of representing an authority is potentially very wide:
  - where a member is appointed or nominated by their authority to another body, such as a board of directors or trustees;
  - where a member is abroad eg where they are acting as a representative of the authority on an official visit;
  - members will need to distinguish between occasions where they are invited to a meeting or function as an individual, and those where they are invited because of their position as a member of the authority. In the latter situation, they will be acting as a representative of the authority. Borderline situations may arise in relation to political events, where it might not be clear whether a member's presence relates to their position within a political party or to their membership of the authority;

any investigation will need to establish who invited a member to be there, in what capacity that invitation was extended and for what purpose. The view of the person sending the invitation will be of primary importance but the member's view will also be relevant;

- private discussions about authority business, either with members or officers, is likely to be viewed as carrying out the business of the member's office;
- a member suspended from holding office by a case tribunal or standards committee will be unable to take part in the formal business of the authority during the period of suspension. However, the Standards Board's view is that a suspended member can continue with ward business, eg receiving representations from ward residents. Therefore, a suspended member can still act, in these limited circumstances, in an "official capacity";
- members who represent their authority on other bodies (except for relevant authorities) are expected to comply with the general obligations contained in Part 1 of the Code); however, the detailed provisions about disclosure and registration of interests do not apply as such bodies are likely to have their own rules about such matters. A member who has a prejudicial interest, however, in a matter being considered by such a body is still bound by the obligation under paragraph 12(1)(c) of the Code not to "seek improperly to influence a decision about that matter";

### **PARAGRAPH 3: RESPECT, EQUALITY, BULLYING AND INTIMIDATION**

#### **Respect**

- the obligation to treat others with respect is not intended to stand in the way of lively debate in local authorities, a crucial part of the democratic process. Differences of opinion and the defence of those opinions through members' arguments and public debate are an essential part of the cut and thrust of political life;
- "You're talking drivell" is likely to be an acceptable expression of disagreement (as it's aimed at the expression of an idea or argument);
- Calling someone a "useless, fat, dimwitted, ugly four-eyed git", on the other hand, is more likely to be a failure to comply with this obligation (paragraph 3(1)), as this is aimed at the person and their personal characteristics;

- the Adjudication Panel found that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code. However, the conduct could be directed against a general class or type of person, none of whom are present. The same Adjudication Panel hearing decided that in that case, conduct would not be a potential breach of this paragraph of the Code. However, depending on the circumstances, another paragraph of the Code might be engaged;

### Case Examples

- *a member interrupted an interview between a reporter and another member during a break in a council meeting. He steered the reporter out of the room and threatened the member using extremely abusive language. This was seen by others including members of the public. The member immediately apologised for his behaviour. He was censured.*
- *a member sent an aggressive and threatening letter about another councillor to members of a rival political group. He did this after a meeting and via the council's email system. He abused and threatened the councillor over the phone two days later, and then assaulted him. He also sent an email in which he referred to councillors as "idiots". The tribunal decided that the letter and the email were rude and intemperate and failed to treat others with respect. Also, the the conduct towards the other member was extremely rude and the threats and violence amounted to failing to treat him with respect. This conduct also brought the member's authority into disrepute. The tribunal noted that the member had apologised to the other member and said he had learned from the experience. The tribunal also took into account the fact that the member was a long-serving and committed councillor. He was suspended for a year.*
- *a member persistently refused to obey the chair's rulings at meetings, refused to be quiet when asked, and at two meetings of the council had to be asked to leave by the police. The events took place over a three month period. He was disqualified for a year.*

### Equality

- the equality enactments outlaw discrimination on the grounds of sex, race, disability, religion or belief, sexual orientation and age. Generally, these statutes impose positive duties to eliminate unlawful discrimination and harassment, and promote equality;
- examples include:
  - the equal pay legislation: this prohibits unjustifiable differences in pay between men and women, and covers most matters normally included in contracts of employment;
  - the sex discrimination legislation: this relates to discrimination on the grounds of sex or marriage in non-contractual matters such as
    - ❖ arrangements concerning recruitment
    - ❖ offers of employment
    - ❖ trade union membership
    - ❖ training transfer

- ❖ promotion
  - ❖ dismissals
  - ❖ redundancies
  - ❖ any other treatment not covered by a contract of employment
- the racial discrimination legislation: local authorities must have due regard to eliminating unlawful discrimination, and to promoting equality of opportunity and good relations between different racial groups. It also creates specific duties associated with carrying out functions and the provision of goods and services;
  - the Equality Act 1996: this creates similar offences to the racial discrimination legislation for discriminatory acts done by reason of a person's religion or belief, or lack of religion or belief;
  - the disability discrimination legislation: this prohibits disability-related discrimination and makes failure to make reasonable adjustments a form of discrimination. Exceptionally it does not prohibit or restrict 'positive' discrimination in favour of disabled people;
- Breaches of the various areas of anti-discrimination laws can occur in four main ways:
    1. direct discrimination: this occurs when someone is treated less favourably on the grounds of their sex, race, disability, religion or belief, sexual orientation or age, eg if a woman was not called for an interview for a chief executive post, despite the fact that she fulfilled the person specification better than any of the men short-listed;
    2. indirect discrimination: this may occur where a requirement or condition has a disadvantageous and disproportionate impact on members of particular groups that are defined by sex, race, disability, religion or belief, sexual orientation or age, eg members decide that all applicants for council employment must be six-foot tall: this requirement would have a disproportionate impact on women and members of many racial groups and would also be unjustified;
    3. victimisation: this occurs if a person is treated less favourably because they have complained about unlawful discrimination or supported someone else who has, eg where a member sought to undermine the employment prospects of an officer, when the officer has supported someone who made an allegation of discrimination against the member;
    4. harassment occurs where unwanted conduct violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment on grounds of their sex, race, disability, religion or belief, sexual orientation or age. An example would be if officers were subjected to unwanted banter or teasing about their sexual orientation or beliefs;
  - Article 10 of the Human Rights Act 1998 gives a high level of protection to comments that are genuinely made in the course of political debate, even if most people would find them offensive;
  - merely arguing, or even voting, against a proposal which is aimed at complying with a positive anti-discriminatory duty would not be enough by itself to risk breaking this part of the Code;
  - simply having a party political position on an issue is unlikely to amount to a breach of this provision because it does not, of itself, involve the council doing anything;

- under the equality enactments, an authority is made liable for any discriminatory acts which a member commits in their official capacity;

### Case Examples:

- *this example concerns a member's behaviour under the previous Code (although still relevant under the new Code) and the general duty under Section 71 of the Race Relations Act 1976. In a case before the Adjudication Panel, the tribunal considered how the general duty imposed by Section 71 impacted on the behaviour of a councillor at a training session. He had attended a seminar about the council's race equality scheme with other members and officers. His conduct was found to have been disrespectful to the trainer. Rather than acknowledging his initial inappropriate behaviour, the member chose to repeat it in interviews to the local newspaper and radio station and then to compound it by making a statement to a meeting of the council using offensive terms and language. The member was disqualified from office for three years.*
- *this is a hypothetical case: a local authority considered a scheme whereby its leisure centre would provide weekly swimming sessions open only to disabled adults. A member interjected and shouted out, "I could not care less about disabled paralympians. We've only got one swimming pool in the entire area and we can't afford to have it shut for two hours each week to all the other swimmers in the area!" If the member had said no more after his first sentence and voted against the plan, this would be a potential breach of the paragraph, as it might cause the council to be in breach of its general duty under the Disability Discrimination Act 1995 (as amended). However, if the reason for his first statement, intemperately stated though it might be, is then said to be a concern over resources (in other words, the pool being closed to other swimmers for two hours each week), that behaviour would probably not be sufficient for a breach of the Code.*

### Bullying

- not just limited to the bullying of officers;
- the Standards Board defines bullying as offensive, intimidating, malicious, insulting or humiliating behaviour by an individual or group of individuals, based on abuse or misuse of power or authority, which attempts to undermine an individual or a group. It can have an impact on a council's effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave;
- conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, or when the behaviour by both the complainant and member contributed equally to the breakdown in relations;
- conduct is likely to be seen as bullying if a notional reasonable member of the public who looks at the conduct objectively would regard it as such;
- in the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time eg criticism of the way in which an officer or officers handled particular matters. It is important that members raise issues about poor performance in the correct way and at the proper forum, such as in a private meeting with a senior manager, and not in a public meeting or through a published attack in the media. If a member's criticism is a personal attack or is offensive in nature it is likely to be unacceptable. It is only where members' conduct is unfair, unreasonable or demeaning that paragraph 3(2)(b) will be relevant;
- although many minor acts can cumulatively amount to bullying, the subjective general view of the victim or witness needs to be supported by objective evidence of

action that can amount to bullying. Anyone alleging a pattern of bullying conduct should provide some examples of the words or actions used;

- in contrast, general statements such as “the member has repeatedly intimidated and denigrated me” are not adequate. The victim or witness should describe the specific conduct they are concerned about, providing dates, times, locations, and descriptions of the demeanour of the person concerned;
- bullying conduct has included, in past cases:
  - abusive or threatening verbal contact;
  - circulating inappropriate emails critical of officers and fellow members;
  - making allegations about officers in letters, emails or in person, both in the company of the officers’ colleagues and in public;

#### Case Example (from previous Code)

- *a member made unjustified complaints about officers, questioning their integrity and implying that they had acted unprofessionally. He had no evidence to substantiate his claims. He made disparaging remarks about their conduct when he did not agree with them. The case tribunal found a pattern to the member’s behaviour, saying “What started off as a matter of legitimate concern became a personal battle, with the [councillor] unable to accept reasonable explanations. The [councillor] perceived anyone who did not accept his version of events as wrong and in some way underhand. Instead of remaining disinterested the [councillor] treat[ed] the matters as personal battles which were to be won by any means, including tarnishing the professional reputations of the officers involved without justification.”*

#### **Intimidation**

- once there is the possibility of a complaint, great care should be taken when members deal with people involved with their case. Apart from interviews with an investigator, discussion of the case should normally be limited to administrative arrangements. If the need arises and the member has no legal assistance, they should normally communicate with those involved in writing. This is for their own protection and is also in the interests of transparency. If that is not possible then members should, if appropriate, confirm their conversations in writing as soon as possible;

#### Case Example (from previous Code)

- *a member held a meeting with an officer at which he attempted to coerce him into influencing one of his staff not to give evidence against the member at a hearing before a case tribunal for alleged breaches of the Code. The member was already disqualified for three years. He was disqualified for a separate period of two years as a result of this behaviour which resulted in a longer period of disqualification overall;*

#### **Compromising Impartiality**

- this is directed at any activity that seeks to put pressure on officers to carry out their duties in a way that is biased or partisan. This may include direct or indirect coercion to favour a particular person, group or organisation, whether commercial, political or voluntary. This is contrary to officers’ obligations to act independently and in the public interest;
- Paragraph 3(2)(d) may cover the whole range of activities carried out by the authority, eg:

- preparing committee reports, particularly in a controversial area such as planning control or licensing;
  - the allocation of council housing;
  - the appointment of staff;
  - failure to comply with Member/Officer Protocols;
- it does not only cover officers, but also contractors or consultants who are working for the authority on a short-term basis, or the employees of organisations that deliver local authority services;

### Case Examples

- *a member inappropriately interrupted an informal meeting between council officers and trade union members to give his opinion on council staffing matters. His son was a council employee. The member threatened to sack an employee and was aggressive and abusive. The tribunal found that the member's interruption of the meeting had irretrievably compromised the officers' impartiality in dealing with the trade union members. The tribunal considered that the member had put pressure on the officers to accept his suggestions on staffing issues;*
- *a member claimed that two members of another political party had intimidated a council officer into delaying the clean-up of an estate. The case tribunal considered that the statements were false and seriously damaged the reputations of the councillors and the council officer concerned. It concluded that the member acted in a way that was likely to compromise the council officer's impartiality by falsely claiming that he had yielded to improper pressure.*

### **PARAGRAPH 4: DISCLOSURE OF CONFIDENTIAL INFORMATION**

- "information" includes facts, advice and opinions, written material, including tapes, videos, CDs, DVDs and other electronic media, and material in unwritten form, including intellectual property;
- information can only be confidential if all of the following apply:
  - it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
  - it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
  - disclosure of it would be detrimental to the party wishing to keep it confidential;
- section 100A(3) Local Government Act 1972 defines 'confidential information' and 'exempt information' for the limited purposes of preventing public access to the meetings of certain types of authority. Disclosure of such confidential information by a member will be a breach of the Code, but disclosure of exempt information may not be (however, this is only if the public interest in disclosure outweighs the public interest in maintaining the exemption);
- in a more general sense, internal discussions between members and officers may also be confidential, eg if they concern emerging council policy. In addition the term can include matters of commercial sensitivity or security;
- "of a confidential nature" covers situations where a member becomes aware of information accidentally or through a third party; it goes beyond the very narrow definition of confidential information in section 100A(3). Information is not confidential or of a confidential nature solely because the originator would prefer the information to

be kept out of the public domain. However, there may be contractual reasons why information may be of a confidential nature, eg because of a confidentiality clause in an agreement;

- matters of commercial sensitivity, which may at one time be exempt, may later become public information, eg in relation to a local authority property transaction. In considering whether a breach had occurred, timing would be a major factor to take into account;
- under the Freedom of Information Act 2000, information must be provided to an applicant unless an exemption applies. Information that would not be released under that Act is confidential or of a confidential nature. Other information is unlikely to be;
- if members believe the information is confidential they must not disclose it, except in the circumstances set out in paragraph 4 of the Code;
- the person who originally provided the information given in confidence will normally be authorised to give consent to its disclosure, however this authority may be overridden if there is a conflict between the willingness to disclose the information and the intrinsically confidential nature of the information. The member may need to ask another person who is in a position to balance any competing interests involved;
- there will be a wide variety of circumstances where a person is required by law to disclose information, eg where a person is summoned to give evidence in a court of law, or receives a request for information from an Ethical Standards Officer (where it is a criminal offence not to comply);
- in deciding whether disclosure is in the public interest, there are four requirements to be considered:

1. the disclosure must be reasonable: Members must consider issues such as:-

- whether there is a genuine belief that the information disclosed is substantially true. The disclosure is unlikely to be reasonable if this belief is not held;
- whether the disclosure is made for personal gain. If the disclosure is paid for, it is unlikely to be reasonable;
- the identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable to disclose the information to the world at large through the media;
- the extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable;
- the seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable;
- the timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to recur.
- whether the disclosure involves a member's authority failing in a duty of confidence owed to another person;

2. the disclosure must be in the public interest: needs to involve one or more of the following or something of comparable seriousness that either has, is, or is likely to happen:

- a) a criminal offence
- b) a member's authority or some other person failing to comply with any legal obligation to which they are subject
- c) a miscarriage of justice
- d) the health or safety of any individual being in danger
- e) the environment being damaged
- f) information tending to show any matter falling within (a) to (e) being deliberately concealed

3. the disclosure must be made in good faith: this will not be met if the disclosure is made with an ulterior motive, eg to achieve a party political advantage or to settle a score with a political opponent;

4. the disclosure must be made in compliance with any reasonable requirements of the authority: this means that before making the disclosure, a member must first raise concerns through the appropriate channels set out in the authority's policies or protocols eg whistleblowing and confidential information;

- in some situations, it may be extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege;
- the right to freedom of expression in the European Convention on Human Rights does not, of itself, prevent a disclosure of information being a breach of the Code, as it is qualified by duties and responsibilities and may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society for preventing the disclosure of information received in confidence;
- the balance of the public interest in maintaining confidence must be weighed against the countervailing public interest in disclosure;
- under paragraph 4(b) of the Code, members must not prevent another person from gaining access to information to which that person is entitled by law. The circumstances where this might apply were too wide to list exhaustively in the Review, but the following examples were given:
  - the LGA 2000 requires the Register of Members' Interests to be available for public inspection at all reasonable hours. If a member attempted to prevent access to information covered by these provisions, that member would fail to comply with paragraph 4(b);
  - members of local authorities have the right to see documents held by the authority if they can demonstrate a 'need to know'. Overview and scrutiny committees may require members of the executive and officers of the authority to attend before them to answer questions. Withholding information from an overview and scrutiny committee could also be a breach of paragraph 4(b);

### Case Examples

- *the chair of a council took steps to prevent other members gaining access to the accounts of the council. The tribunal confirmed that Section 288(3) of the Local Government Act 1972 and the common law, taken together, give a member of a council the right to inspect accounts and documents. The right under Section 288(3) is not limited to approved accounts or to accounts in the public domain. Frustration of*

*these statutory and common law rights by the chair of the council – by not allowing members to inspect the accounts – constituted unlawful withholding of information within the meaning of the Code;*

- *a member leaked confidential documents to the press about the council's efforts to recover a substantial sum of money from the former leader of the council. Although the case tribunal acknowledged the public interest in exposing possible inactivity on the part of the council in recovering the debt, it concluded that the overriding public interest was in recovering the money, which required the documents to remain confidential. The disclosure of confidential documents had taken place when High Court gagging orders were in place. These orders were a proportionate restriction on the right to freedom of expression, given the ability of the former leader to move assets out of the jurisdiction of the courts. Therefore the member was in breach of the Code when he disclosed documents to the press, although in the circumstances no sanction was imposed;*

#### **PARAGRAPH 5: DISREPUTE**

- this paragraph applies where members are acting in an official capacity and, in the future, at any other time where that conduct constitutes a criminal offence for which they have been convicted;

- not all criminal convictions will be covered: for the Code to be broken, there needs to be a link between the criminal conduct which led to the conviction and the performance of a member's functions:-

- eg if a councillor is convicted for housing benefit fraud, as inappropriate as this behaviour might be, it has most likely occurred in a private capacity. This is because applying for housing benefit is not part of a councillor's role. However, if the fraud arose by a member using their role as a councillor to pressurise a housing benefit officer into granting the benefit then this would be a case where paragraph 5 might apply, if the fraud resulted in a conviction. This would be a breach of paragraph 6(a) in any event, even if there were no conviction;

- paragraph 5 will not apply if a member's conduct cannot be reasonably viewed as being connected to their role as a councillor, rather than as a private individual or as a member of a political party, eg if a member is guilty of violent conduct at a political group meeting of councillors, then that behaviour is likely to be caught by the Code. The same behaviour at a local branch meeting of a political party is not likely to be;

a) section 52 Local Government Act 2000 includes a requirement for members to be bound by the Code when performing their functions. This means acting in their official capacity. An examples is:

- a member attends a private council pre-meeting to discuss a report, which includes a proposal to buy some land for council purposes. The members are told by officers that they are being given sensitive information on a confidential basis. Immediately after the meeting, the member contacts the owner and agrees to buy the property for the price quoted to the council. Although buying the land was not done as a councillor, the member was performing their functions when finding out the sale price and that it was for sale;

- certain activities may appear to be related to the functions of a member but are not, eg when canvassing for re-election, a member is likely to be acting in a private capacity as a political candidate, but not as a member. This is because it is not the function of a councillor to get re-elected;

- a case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed simply to damaging the reputation of the individual concerned. Certain kinds of private capacity conduct, for example drink-driving or petty theft, may damage the reputation of an individual but will rarely be capable of damaging the reputation of the office of councillor or the reputation of the authority.

- Examples of likely instances of disrepute:

- situations where members have put their private interests above the public interest and therefore reduced the standing of their office eg using their position to secure a secret personal profit;

- where a member defies important and well-established rules of the authority for private gain;

- where a member engages in conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider. For example, they are convicted for sexual offences against children when running a private care home providing services to the council;

- in general terms, disrepute can be defined as a lack of good reputation or respectability;

- In the context of the Code, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded by an objective observer as either:

1. reducing the public's confidence in that member being able to fulfil their role; or
2. adversely affecting the reputation of members generally, in being able to fulfil their role;

### Case Examples

- *a councillor accessed and downloaded inappropriate material on the internet using a computer provided by the council. He was cautioned by the police for doing so. This constituted behaviour which brought his office into disrepute as he had used the council's equipment;*

- *a councillor used council notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking penalties dishonestly. He was found to have brought his office and authority into disrepute;*

- *a member and others rented allotment plots from an association which was planning to repossess them. The member was chairman of a local partnership, which offered grants of up to £5,000 to community regeneration projects. He suggested in a letter that he might be able to obtain funding for the association if the decision to repossess the allotments was reconsidered. The case tribunal considered that the letter was an offer from the member to influence and secure a grant for the association in return for the withdrawal of proceedings against him and the others. It also considered that the letter abused his position of trust as a member and deliberately sought his own personal gain. It therefore brought his office into disrepute. The case tribunal decided to disqualify the member for one year;*

## **PARAGRAPH 6: MISUSE OF RESOURCES**

- this paragraph applies where members are acting in an official capacity and, in the future, at any other time where that conduct constitutes a criminal offence for which they have been convicted;
- there are circumstances where it will be proper for a member to seek to confer an advantage or disadvantage and other circumstances where it will not. For example, there can be no objection to members voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that members' attempts to secure this advantage are clearly part and parcel of their duties as a local representative;
- a member's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a member's public position to promote private interests over the public interest will be improper;
- paragraph 6(a) also covers failed attempts to confer an advantage or disadvantage;
- the resources of the authority include services and facilities, financial resources, land or premises, equipment, computers, materials, the time, skills and assistance of anybody employed by the authority, or working on its behalf, and information held by the authority which it has not published;
- the Standards Board strongly recommends that authorities have protocols dealing with the use of authority resources. The key principle underlying all such protocols should be that public office and public resources should not be used to further purely private or party political purposes;
- there will be times when it is acceptable for political groups to use the resources of the authority, for example, to hold meetings in authority premises. Often it is impractical to separate a member's political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents. There must be a sufficient connection between the use of resources and the business of the authority;
- paragraph 6(b)(ii) of the Code complements section 2 of the Local Government Act 1986, which prevents the publication of material "designed to affect public support for a political party". This sub-paragraph goes considerably further and covers not only the publication of campaigning material but also any other activity that is intended to promote purely party political interests.
- members of authorities to which it applies must have regard to any applicable local authority code of publicity. Publicity is defined as "any communication, in whatever form, addressed to the public at large or to a section of the public". It will cover meetings and websites as well as printed and other written material;
- members should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using their council's resources in these circumstances, they should not appear to be seeking to influence public opinion in favour of them, their party colleagues or their party;

### Case Examples

- *the member wrote a newsletter article suggesting that constituents could contact him with their problems while the female member was on maternity leave. The two members' wards were due to be merged and the female member complained that the*

*article was an improper use of the other member's position, aimed at acquiring political advantage. The female member had stated in an earlier letter to a local newspaper that she was still actively engaged in work for the authority and that arrangements had been made to support her during her maternity leave, although she had been unable to attend evening meetings since the birth of her child. The member was found to have improperly used his position to secure an electoral advantage for himself and had promoted his name and his availability to constituents while the female member was on maternity leave;*

- *a member, in the week before a meeting to discuss car parking charges, contacted three officers connected to the matter in an attempt to influence the decision. It was alleged that the member had a personal and prejudicial interest in the matter because he was a director of a company that owned a restaurant in the town centre, and that his customers would be adversely affected by the proposed charges. In addition, it was alleged that the member's wife was also a director of the company and was president of the local chamber of commerce. The tribunal decided that he had improperly sought to confer an advantage for town centre businesses, which included his own, and had therefore failed to comply with the Code of Conduct. The case tribunal decided to disqualify him for nine months;*

- *councillors were offered a website by their authority to use for their role as a councillor. A member used the site to post party political material of his own party and to make political comments about other political parties. His standards committee suspended him from office for three months as a result;*

#### **PARAGRAPH 7: ADVICE OF STATUTORY OFFICERS AND REASONS FOR DECISIONS**

- the monitoring officer has a statutory duty to prepare and arrange for a report to be sent to all members, where any proposal, decision or omission by the council or executive is, has, or is likely to lead to a contravention of any enactment or rule of law, or any maladministration or injustice, already investigated by the Local Government Ombudsman;

- the monitoring officer also has a statutory duty to establish and maintain a Register of Members' Interests. When giving advice about the registration of interests the monitoring officer is giving statutory advice;

- further statutory duties arise when a case is referred by an ethical standards officer for local investigation and/or determination, or where an ethical standards officer issues directions to a monitoring officer; when giving advice about issues relating to these duties the monitoring officer's advice will be caught by paragraph 7;

- every local authority must ensure that one of their officers has responsibility for the proper administration of its financial affairs. There is a specific statutory duty on these officers to make a public report in specified cases of actual or anticipated financial misconduct;

- the chief finance officer must produce a report if it appears that the authority, any committee or sub-committee of the authority, or a person employed by the authority or a joint committee, has done or is about to do the following: make a decision that involves the authority incurring any unlawful expenditure or take action that would be unlawful, and likely to cause the authority a loss or deficiency or to enter an unlawful item of account;

- members do not have to follow advice offered by a chief finance officer or monitoring officer. However, a member is required to have regard to such advice where it is given under a statutory duty by these officers, eg in the cases above. If a member

disregards or discounts the advice without lawful reason, this is likely to constitute a breach of the Code;

- members of an executive may fail to comply with paragraph 7(2) of the Code of Conduct if they fail to give proper, adequate and intelligible reasons for a decision;

### **PARAGRAPH 8: PERSONAL INTERESTS**

- paragraph 8 is deliberately drafted very broadly. A personal interest can arise not only from the employment, business interests and shareholdings of the member concerned, but also from those of their relatives or close associates. The scope of paragraph 8 is much wider than the list of interests that must be registered. This is to enable a relatively wide range of personal interests to be declared without unnecessarily limiting participation. The wide scope reflects the policy of promoting transparency in local government;

- a personal interest will arise wherever a matter “relates to or is likely to affect” one of the interests registered under the Code . There will also be a personal interest wherever a matter affects, or is likely to affect the people, organisations or places listed in the member’s register of interests. A matter can relate to an organisation either where it directly affects it or where the organisation is otherwise concerned about the outcome of the matter. However, there are important limits to this:

- the matter must relate to the organisation concerned. A member of Friends of the Earth does not have a personal interest in all issues that affect other members of Friends of the Earth, and the same principle applies to political organisations;

- particular caution needs to be exercised in relation to political parties. Membership of political parties should be registered under the Code. However, given the transparently central role that political parties play in local government, it would be impractical for members to declare a personal interest in every matter on which their political party had expressed a view;

- “any body exercising functions of a public nature” is wide in scope and covers more than public authorities. A function will usually be “of a public nature” where it is underpinned by statute or government. Criteria to consider when deciding whether or not a body meets that definition are:

- does the body carry out a public service?

- is the body taking the place of local or central government in carrying out the function?

- is the body (including one providing outsourced services in the private sector) exercising a function delegated to it by a public authority?

- is the function exercised under legislation or according to some statutory power?

- can the body be judicially reviewed?

Unless a member can answer ‘yes’ to one of the above questions, it is unlikely that the body is exercising functions of a public nature;

- Examples of bodies included in this definition are:

- regional and local development agencies
- other government agencies
- other councils

- public health bodies
- council-owned companies exercising public functions
- arms length management organisations carrying out housing functions on behalf of the authority
- school governing bodies

- the reference to any body “directed to charitable purposes” was clearly intended to cover more than organisations that fall within the legal definition of a charity. Any organisation directed towards charitable purposes (as that term is commonly understood), to any significant degree, comes within the scope of these words. Therefore, membership of Rotary or Lions clubs are likely to require registration. The Standards Board believes that many Masonic organisations will fall within the scope of this provision as some are registered charities with the Charity Commission;

- generally, religious organisations will not fall within the scope of paragraph 8 as the influence of public opinion is normally not a principal purpose; likewise, although a religion may encourage charitable virtues, this will not make it a body directed to charitable purposes;

- “Employment or business” covers any activity that generates income for the member. Employment can also cover voluntary work. It will not cover unearned income (from property or investments) unless the person concerned plays an active role in the management of those assets;

- the phrase “has appointed you” in paragraph 8(1)(a)(iv) applies to bodies with which a member has a traditional employer/employee relationship and, probably, a contract of employment. It is also intended to cover organisations that have appointed the member to an office, eg to the board of a government agency or as a magistrate. The phrase will apply to members who have been appointed to a particular post but who have not yet taken up employment;

- members should register any person or organisation who made a financial contribution (whether direct or indirect) to their election campaign or who assists them with the costs of carrying out their duties This may include the member’s political party. Members should also register any person or organisation providing premises that relate to a member’s official duties, such as the location of a ward surgery, unless the member is paying a commercial value to use them;

- “Place of business” refers to business premises rather than a piece of equipment (such as a telephone box or an electricity substation). However, if the person or body owns the land on which such a piece of equipment is situated, then the requirement to register will apply because the body concerned will have “land” in the area;

- a beneficial interest is one where the owner of the interest is entitled to benefit from the asset concerned. Such an interest can arise directly through the legal ownership of an asset, or indirectly where the member concerned is the beneficiary of a trust;

- the term “class of securities” includes any instrument (such as a share, stock, bond or option) that indicates some form of ownership rights or creditor relationship with a particular body;

- the “nominal value” of shares is usually the face value declared on the share certificate when issued. A member who holds a small number of shares in a large public company of the kind that result from a privatisation issue, or a building society becoming a company, is unlikely to need to register them. However, this high threshold is considerably offset by the alternative criteria (more than one hundredth of the total

issued share capital). Comparatively modest shareholdings in smaller companies will be caught by this requirement;

- a member should register gifts and hospitality (and the donor) if they could reasonably be viewed as relating to a member's official duties. This will not normally include gifts from friends or family. The member must apply honesty and common sense when they consider how receipt of a gift might be interpreted;

- hospitality can be defined as any food, drink, accommodation or entertainment freely provided or heavily discounted. In assessing the value of hospitality received, the Standards Board believes the best way to preserve transparency is for members to assess the hospitality on offer, whether it is accepted or not, eg a member may go to a champagne reception but only drink a glass of orange juice;. As a guide the member should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. Clearly where the member is in any doubt the prudent course is to register the hospitality;

- the focus of the Code is on the source of the hospitality and its nature. The Standards Board does not consider that hospitality should be registered where it is provided by the authority or where it is clearly ancillary to the business being conducted, such as an overnight stay for an away-day. Therefore hospitality at a civic reception or mayor's ball would not need to be registered. However, the hospitality should be registered if it is provided by a person or body other than the authority, and is over and above what could reasonably be viewed as ancillary to the business conducted;

- members might meet dignitaries or business contacts in council offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality;

- although the mayor or chair may attend many social functions, they are not exempt from the requirement to register hospitality. However, where the hospitality is extended to the office holder for the time being rather than the individual, the Standards Board takes the view that there is no requirement under the Code to register the hospitality. The question a member needs to ask themselves is, "Would I have received this hospitality even if I were not the mayor/chair?" If the answer is yes, then it must be registered;

- once three years have passed since members registered the gift or hospitality, their obligation to disclose that interest to any relevant meeting ends. It is the date of registration that is important, not the date the gift or hospitality was received;

- "well-being" can be described as a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their well-being. It is not restricted to matters affecting a person's financial position;

- "member of your family": should be given a very wide meaning. It covers anybody related to a member by birth, marriage or civil partnership;

- "close associate": a very broad term. A person with whom a member has a close association is someone that they are in either regular or irregular contact with over a period of time, who is more than an acquaintance. A closer relationship is implied than mere acquaintance. Members and monitoring officers might wish to consider the following questions when deciding whether a close association exists:

- how many times do the two people meet?

- where do they meet?
- do they regularly attend the same social events?
- do they know each other's families?
- do they visit one another's homes?
- do they have regular business dealings?

A level of relationship above and beyond that which usually exists between colleagues and political associates will be required to establish the existence of a close association. Simply sitting on the same committee as a fellow councillor or sharing car journeys will not create a close association in itself;

Circumstances will arise where there is clear personal hostility or resentment between two people. In such circumstances it seems likely that a personal interest will arise;

Examples of Personal Interests:

- *a member has a niece. The niece has recently moved in with her boyfriend who is employed by a local building firm. The firm puts in a bid for work from the authority. The member will have a personal interest (but not necessarily a prejudicial one);*
- *a member has grandchildren who regularly use the authority's school bus service. The member will have a personal interest in relation to any discussion of the school bus service. This will only become a prejudicial interest when it directly affects the child's school.*

**PARAGRAPH 9: DISCLOSURE OF PERSONAL INTERESTS**

- generally a member should declare the existence and nature of a personal interest as soon as consideration of the business which gives rise to it starts, or as soon as it becomes apparent that they have an interest in it, if this is later. Normally consideration starts once the relevant item on the agenda is reached. It will include the hearing of any evidence and representations or submissions from officers, interested parties or members of the public.

**PARAGRAPH 10: PREJUDICIAL INTERESTS**

- You cannot have a prejudicial interest unless a personal interest has first been established;
- A personal interest will only be a prejudicial interest if all of the following conditions are met:

**1)** the matter affects a member's (or a body/person through whom they have a personal interest's) financial interests or relates to a licensing or regulatory matter affecting them or a body/person through whom they have a personal interest;

**2)** the matter does not fall within the exempt categories set out in paragraph 10(2)(c);

**3)** a member of the public, who knows the relevant facts, would reasonably think the member's personal interest is so significant that it is likely to prejudice their judgment of the public interest;

- for an interest to be prejudicial it must be "likely to prejudice" the member's judgment. In other words, the interest must be likely to harm or impair the member's ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not

normally be sufficient to meet the test. There must be some factor that others reasonably think will positively harm the member's ability to judge the public interest objectively;

- The SOAP test described below may be used to decide whether a member of the public, with knowledge of the relevant facts, would reasonably regard an interest as so significant that it would be likely to prejudice the member's judgment of the public interest:

- **Selflessness** – could any and every possible decision the member made in connection with the matter be regarded as selfless?

- **Objectivity** – could the member be regarded as being as objective in the matter as his or her fellow members?

- **Accountability** – could the member's involvement in the matter stand up to public scrutiny?

- **Public interest** – would the public interest be harmed by the member's involvement?

- “determining of any approval, consent, licence, permission or registration”: essentially, this means making decisions about regulatory issues like planning applications and licences issued for such matters as petroleum storage and operating taxis. “Determining” in this context is wide enough to cover variations, additions, removal and revocation of approvals, consents, licences, permissions and registrations (including conditions attached to them). “Approval” in this context means some form of regulatory decision making;

- a member who belongs to a lobby or campaign group opposing a planning application will have no prejudicial interest when the application is considered simply because it relates to the purposes of the group. However, the member would have a prejudicial interest if the lobby group had submitted the planning application or had land which was affected by it. A member who is elected on the basis of opposing a planning application and who belongs to a lobby group set up to do so will have no prejudicial interest, since a political stance on a subject does not lead to a personal interest arising. The issue of predetermination or bias may need to be considered in the examples above;

#### Case Example:

- *a member who was a solicitor and also the leader of a council represented an applicant for a taxi licence in a professional capacity at the council's licensing committee meeting. He was not a member of the committee and was not involved in taking any decisions on the application. The Adjudication Panel decided that he had a prejudicial interest in his client's application and that he could not divest himself of his member role to appear as a solicitor before the meeting. He was suspended for six months as this appeared to be a misjudgment on his part rather than action he had taken for an improper motive;*

#### **PARAGRAPH 11: PREJUDICIAL INTERESTS – OVERVIEW & SCRUTINY**

- members of overview and scrutiny committees should be different from those members who originally took the decision under scrutiny. The decision-makers can appear before the overview and scrutiny committee to answer questions or give evidence about the decision or action under consideration, but should play no part in the committee's deliberations;

- a member with a prejudicial interest can appear before an overview and scrutiny committee, even if the public are not allowed to attend. Section 21 LGA 2000 gives overview and scrutiny committees the power to request attendance from an executive member (and anyone else, including a non-executive member) to answer questions;

## **PARAGRAPH 12: PREJUDICIAL INTERESTS – PARTICIPATION**

- informal meetings between members and officers and political group meetings are not covered by the requirement to declare interests. However, paragraph 6(a) of the Code, which prevents members from using their position improperly, applies at all times. A member should not use pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest;

- the general rule is that a member with a prejudicial interest must leave the meeting room as soon as the relevant item of business is being considered. However, a member can stay if asked to make representations, answer questions or give evidence, provided that the public can attend for the same reason. Once the member has done so they must leave the room (although the public may be allowed to observe the discussion and the vote). If the meeting decides that a member should finish speaking, despite their intention to say more, they must comply with its decision.

- dispensations: although there is no requirement to do so in the Code or the regulations, the Standards Board strongly recommends that members publicly declare they are relying on a dispensation. They should do this at the same time as they state the existence and nature of their interest.

- “improper influence”: any attempt by members to use their position to further their own interests, in a way that would not be open to ordinary members of the public, eg private lobbying of members, or officers, involved in the decision-making process is a clear example of improper influence;

### **Case Examples:**

- *a parish councillor took part in a council meeting about a playing field despite the fact that he was the chairman of a football club that wanted to use the field. He was given a disqualification of three years;*

- *a town councillor failed to withdraw from a council meeting about the dismissal of a council employee, who was his niece. He was given a disqualification of two years;*

- *a councillor failed to withdraw from a council meeting that was considering his son’s licensing application for an entertainment venue. He was given a disqualification of 18 months;*

## **PARAGRAPH 13: REGISTRATION OF INTERESTS**

- members are under an obligation to notify the relevant monitoring officer of their interests within 28 days of election or appointment. This obligation also applies in relation to re-election and re-appointment. Members are under a continuing obligation to ensure that their register of interests is kept up-to-date;

## **PARAGRAPH 14: SENSITIVE INFORMATION**

- sensitive information is information which a member considers could create a serious risk that they or someone in their household would be subjected to violence or intimidation, if it became publicly available. It may include instances where a member is employed in areas of sensitive employment, such as certain types of scientific research, or where a member is a magistrate or judge involved in criminal cases where they are likely to receive threats;
- it is for the monitoring officer to decide if the information is sensitive. If the monitoring officer agrees, this information does not need to be included in the register of interests. However, if the monitoring officer disagrees then it must be registered.
- a member must notify the monitoring officer of any change in circumstances which would mean that the sensitive information is no longer sensitive within 28 days of the change.