

Northern Area Committee

7 April 2005

John Crawford
Head of Legal & Property
Tel: 01722 434607
jcrawford@salisbury.gov.uk

REPORT

REVIEW OF THE CODE OF CONDUCT

1. Report Summary.

- 1.1. To advise Members of the review ["the Review"] of the Code of Conduct for Members ["the Code"].
- 1.2. To seek Members views in response to the Review.

2. Background.

- 2.1. The Code was introduced in 2001 as part of the Local Government Act 2000 and came into force across all authorities in May 2002. The Code is based on ten general principles derived from recommendations by the Committee on Standards in Public Life.
- 2.2. Consultation by the Standards Board for England ["the Board"] on the Code started on 18th February. The closing date for responses is 17th June 2005. The Board intends making its recommendations to the Office of the Deputy Prime Minister for consideration in the autumn of 2005.
- 2.3. A leaflet introducing the consultation has been sent to monitoring officers, council leaders, chief executives and parish clerks. A copy of the leaflet is attached at [Appendix 1](#).
- 2.4. The leaflet includes a number of questions on which Members views are sought.
- 2.5. A full form consultation paper is available on the Board's website at www.standardsboard.co.uk/TheCodeofConduct/Codeconsultation/
- 2.6. The consultation reflects the majority of revisions to the Code suggested in the report of the Graham Committee on Standards in Public Life's Tenth Inquiry published in January 2005. A copy of the Executive Summary and List of Recommendations is attached at [Appendix 2](#). The main area where there is disagreement between the Graham Committee and the Board concerns whether there should be a local filter for complaints. The Graham Committee recommends locally based arrangements for the initial handling of complaints because it sees that it is not sustainable for the Board to handle all complaints irrespective of the seriousness of the complaint made. However the Board's belief is that it will be difficult to maintain public confidence and trust in local democracy if councils are seen to be deciding which of their own members should be investigated.

3. Purpose of the consultation.

- 3.1. To review the effectiveness of the Code and explore ways in which it could be simplified, clarified and improved with a view to ensuring that the Code continues to have integrity, standing and relevance to members and the public.
- 3.2. All parts of the Code are open for consideration but the Board sees the key issues as:
 - Whistleblowing: should there be an express public interest defence for people disclosing confidential information?
 - Duty to inform: should members be obliged to report other members they believe to have breached the Code?
 - Private life: to what extent should the Code cover member's private behaviour?
 - Registering and declaring interests: can the current system be simplified and improved?
- 3.3. The aim of the review is not to address the role or operations of the Board, its referral thresholds or to discuss whether particular matters merit investigation in individual cases.

4. Consultation mechanisms.

4.1. Responses to the Board may be made in any capacity. The Board asks that respondents indicate if they are representing a particular organisation and in what capacity they are responding.

4.2. A standard report and appendices is being circulated to all Area Committees and a report collating all of the responses will then be brought to the Standards Committee with a view to making any recommendations to Council. Council can then resolve at its May meeting on a council wide response.

4.3. Members can respond directly to the Board in an individual capacity if they so choose.

4.4. So far as parish councils are concerned the leaflet is being made available at the council parish and town council liaison meeting on 20th April.

5. Recommendations.

5.1. To note the leaflet.

5.2 To recommend responses to the consultation questions for consideration by Standards Committee.

5.3. To make any other recommendations concerning the Code for consideration by the Standards Committee that Members think fit.

6. Background Papers.

Full consultation paper issued by the Board

7. Implications.

- | | |
|--------------------------------|---|
| ▪ Financial | : none |
| ▪ Legal | : contained in the report |
| ▪ Human Rights | : none |
| ▪ Personnel | : none other than handling the consultation process |
| ▪ Community Safety | : none |
| ▪ Environmental | : none |
| ▪ Council's Core Values | : excellent service, being fair and equitable |
| ▪ Wards Affected | : all |

Getting the Balance Right

Implementing Standards of

○ Conduct in Public Life

Summary of
Tenth Report

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

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

Objectivity

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

Accountability

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

Openness

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

Honesty

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

Leadership

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

EXECUTIVE SUMMARY

1. Introduction and overview

1.1 The Committee on Standards in Public Life was established in October 1994 by the then Prime Minister in response to concerns about standards in public life. It was given wide-ranging terms of reference to examine current concerns about standards of conduct of all holders of public office. The Committee has published nine reports covering virtually all elected and appointed public office-holders.

1.2 The Committee's Tenth Inquiry was launched in January 2004 with the publication of an Issues and Questions consultation paper [1]. Since then the Committee has carried out a thorough process of consultation and analysis, taking oral evidence from some 72 witnesses and receiving 113 written submissions. In addition we have commissioned two pieces of supporting research. This, our Tenth Report, sets out the Committee findings in full and the associated CD-ROM includes all the evidence received, written and oral, as well as the research reports. This summary provides an overview of the main findings and a full list of the recommendations we have made.

1.3 The stated aim of the inquiry was to examine the administrative procedures which flow from the implementation of the various recommendations of the Committee since it was established a decade earlier. We wished to know whether the procedures and processes set up have been "effective, proportional and not excessive to the objects of the exercise". The selected areas for inquiry were:

- Appointments and reappointments to public bodies (not to the civil service);
- The management and enforcement of Codes of Conduct including declarations of interest across local government, the National Health Service, and other public bodies; and
- Whether the Seven Principles of Public Life are being embedded into organisational culture and what steps are being taken to ensure that this involves the appropriate use of training and development and is more than a box-ticking exercise.

1.4 The Committee's intention is to enhance the effectiveness of these arrangements and to ensure that they can produce the desired outcome of the highest standards of propriety in public life and make the Seven Principles of Public Life a living reality. There are three key components identified by the Committee during the inquiry that are relevant to the specific recommendations we make to improve the effectiveness of the three selected areas:

- **Trust.** Public trust is a pillar of public life. It is concerned with perceptions of honesty but is also about confidence and satisfaction with the outcomes of service delivery. Bridging the gap between values held by the public and their perception of official behaviour is a major challenge facing public bodies in the UK;
- **Governance.** Devolution has provided the opportunity for different models of standards regulation in public bodies to be developed. At the same time governance arrangements for public bodies in England have changed and developed as a result of new 'standards' regulators; and
- **Burden of Regulation.** As regulatory supervision of standards has grown, so have concerns about the potential for the imposition of unnecessary regulatory burdens. This has promoted a realisation that a more sensitive and proportionate or 'strategic' regulatory approach can have a positive impact and serve to better deliver the intended outcomes.

2. Public Appointments

2.1 The regulatory system for making public appointments is relatively new. It was created in 1995 following the First Report of this Committee. On the basis of the evidence we received about public appointments the system works relatively well but there are significant weaknesses and these need to be addressed.

2.2 The strengths include:

- The successful development of a culture which recognises the importance of appointment on merit;

- The broad (but not universal) acceptance by appointing authorities of the Commissioner for Public Appointments' authority as custodian of the Code of Practice on Public Appointments; and
- The commitment of most appointing authorities to running proportionate operations, strong on process, but clear that outcomes – excellent appointments contributing to public service delivery and carrying the confidence of both ministers and the general public – are important too.

2.3 The weaknesses in the system include:

- A small amount of unregulated Ministerial intervention in competitions in England and different from practice in Northern Ireland, Scotland and Wales. The intervention is symptomatic of the need to address the balance between Ministerial responsibility, merit and independent oversight in the current arrangements. Such unregulated intervention poses problems at a time when the Committee's research shows a continuing level of public concern about cronyism;
- The absence in the established appointments framework of the tools necessary for the Commissioner to implement a strategic approach. In the context of public appointments this means creating closer organic links between the regulator and the regulated so that disputes do not escalate; and
- Continuing under-achievement in widening the social base of candidates for public appointments.

2.4 There are a number of challenges to be faced. One is to conduct the debate about sensible reform in inclusive non-judgemental language.

2.5 A second and related challenge is to develop and reform the existing system for selecting members for the board of public bodies in a way which carries greater public confidence and reflects more accurately than at present the Seven Principles of Public Life. This means acknowledging the context of the public's general perception of cronyism in the filling of public appointments. It also means introducing clearer, less ambiguous, rules and procedures for the involvement of Ministers in competitions in which they are involved, so that appointments are demonstrably based on merit.

2.6 Some of the above is already in train and this success should be noted and celebrated. But greater progress will not be achieved without facilitating a more strategic approach to regulation. In making its recommendations, the Committee has sought to achieve five objectives:

- (i) to strengthen the role of the Commissioner for Public Appointments so that she can better discharge her regulatory responsibilities;
- (ii) to clarify the proper involvement of Ministers in the appointments process;
- (iii) to reinforce the role of permanent secretaries as the guardians of the integrity of the appointments process;
- (iv) to create the opportunity for the Commissioner's Code to be applied more flexibly, subject to appropriate safeguards. Any derogation from the Code would be dependant on the importance of the appointment and the appointing authority's expertise and record of achievement in making appointments, i.e. adopting a risk based approach; and
- (v) to put in place a procedure for orderly resolution of any disputes between the Commissioner and appointing authorities.

2.7 All of the Committee's recommendations are designed to comply with the objective of proportionality and also to be consistent with the principles of appointment on merit, and openness in the appointments process.

2.8 Our recommendations are designed to build on the successes of the existing regulatory regime in a way which facilitates more strategic interventions and a more explicit partnership between regulatory and appointing authorities. The principal mechanisms to achieve this are a new Board of Public Appointments Commissioners and annual Public Appointments Plans for departments to set out their record and future policy and practice relating to the public appointments of chairs and board members of the public bodies they sponsor. A Board of Public Appointments Commissioners would create a forum for strategic thinking about public appointments. It would also enable individual commissioners to be linked to one or more department to assist in some high profile appointments and in the creation of annual Public Appointments Plans.

2.9 We have also set out some significant and necessary changes to the appointments process in England to take account of legitimate Ministerial interest in a small number of senior and strategic appointments to public bodies. In these ‘starred’ appointments it would be a requirement for Ministers to decide on a particular recruitment process to be adopted. Ministers would also be consulted throughout the process including at short-listing stage in similar fashion to procedures for civil service open competitions. At the same time (and again in line with the Civil Service Recruitment Code) Ministers would no longer have a choice between appointable candidates, but would delegate the decision to the responsible panel. In this way, the overriding principle of merit is entrenched but without prejudice to the principles of Ministerial Responsibility and Openness. Taken together the proposals for a new, ‘starred’ appointments process constitute a first movement towards convergence between the regulatory regimes for public appointments and civil service appointments.

2.10 We recommend a strengthening of the independent and professional elements of the system with proposals to consolidate the positions of the Commissioner for Public Appointments and independent assessors. As far as the Commissioner is concerned it is important to set out more clearly the procedures for resolving disputes with appointing authorities. We also propose that, in line with her Scottish counterpart, the Commissioner should be given reserve powers to halt appointments where she considers there has been a material breach to the Code. This would remove a loophole in the current arrangements which has encouraged some stakeholders to see the Commissioner as a ‘watchdog’ not a regulator. Independent assessors provide a critical independent element to the public appointments process. We believe their role as guarantors of the process can be developed further by standardising the way they are recruited and trained.

2.11 Above all we wish to emphasise the importance of taking a holistic look at public appointments to make sure that what is achieved is a transparent process leading to the appointment on merit of people able to do the job. This is the approach we have adopted in this Chapter. What is set out is an integrated package which seeks to rebalance the principles of independence, appointment on merit and Ministerial responsibility, in a way which enhances public confidence in the process

and the likelihood of excellent appointments as outcomes. This is not a ‘pick and mix’ approach.

3. The Ethical Standards Framework for Local Government

3.1 The ethical standards framework for local government is arguably the most extensive and comprehensive statutory framework for standards of conduct of any group of public office-holders in the UK. Despite some flaws and problems with its operation it is, in the Committee view, a significant improvement on the situation prior to its introduction in 2000 and when the Committee last examined the area in its Third Report in 1997. Now, as then, it is possible for the Committee to conclude on the evidence it has received that **despite incidences of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct.**

3.2 However, the highly centralised method for handling complaints under the model code of conduct, as prescribed in the Local Government Act 2000, is at the heart of the many, and in our view justified, complaints about the proportionality of the system. This approach, where all complaints must first go to the national body – the Standards Board for England – runs contrary to the advice given by this Committee in 1997 [2] and of the Joint Committee which scrutinised the draft legislation in 1999 [3].

3.3 In terms of the two principal legs of our inquiry [1], **proportionality** and **culture**, this approach has had unintended negative consequences for both.

3.4 **Proportionality.** The system has generated a large number of apparently minor, vexatious and politically motivated complaints that have created a significant backlog of national investigations, leaving many members with accusations hanging over their heads for long periods of time.

3.5 **Culture.** The centralised system has arguably removed primary responsibility for standards from individual authorities (and members). Local Standards Committees, critical in our view to embedding high standards in each local authority, are under-used and in danger of falling into disrepair.

3.6 These problems have been compounded by some teething problems in the introduction of a

model code of conduct (mainly resistance from parish councillors to the requirement to register interests). There have also been serious and ongoing operational difficulties at the Standards Board in managing the centralised system, and delays by the Office of the Deputy Prime Minister in producing regulations to allow limited local involvement in the investigation and determination of cases.

3.7 These problems have, in the main, been avoided by the devolved equivalents in Scotland (although the framework there is only one year old) and Wales from whom some lessons can be learnt but where issues of scale make some other comparisons inappropriate. Northern Ireland is alone in not having a statutory framework for the conduct of local councillors and we recommend that this be addressed following the review of public administration, and upon the re-establishment of devolved government.

3.8 A number of positive developments to the operation of the framework in England occurred during the Committee's inquiry:

- the new Chief Executive of the Standards Board is committed to try and address some of the operational problems (i.e. a reduction in the time taken to complete investigations, the clearing of case backlogs and improved initial complaints handling);
- the Standards Board has already begun a review of the Model Code of Conduct to be completed in early 2005;
- the Office of the Deputy Prime Minister has introduced the long awaited regulations to allow the referral of some cases for investigation and determination to local Monitoring Officers and Standards Committees (these complement the 2003 Regulations that enable referral of completed Standards Board investigations of some cases for determination by local Standards Committees); and
- the Office of the Deputy Prime Minister has also produced a draft of the long awaited Code of Conduct for local government officers for consultation (issued in August for comment by November 2004).

3.9 The challenge for the Committee has therefore been to judge:

- whether these recent developments to address some of the problems in the operation of the framework in England, possibly backed up with further recommendations to fully utilise the new regulations and improve the Model Code of Conduct, will be sufficient to meet the significant concerns raised; or
- whether the centralised approach is inherently flawed and that it should move to a system that enables locally-based handling of complaints, within a national framework where only the most serious cases are investigated and determined by national bodies.

3.10 **The Committee has concluded that, although improvements can and should be made to the existing system, the framework must move to locally-based arrangements for the initial handling, investigation and determination of all but the most serious cases. Only by local ownership and involvement can issues of ethical organisational culture be properly addressed and the overall regulatory framework for standards in local government made proportionate and strategic.**

3.11 In this respect the Committee is echoing its conclusions in our Third Report which said [2, page 3] *"Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity about standards has grown. We believe that the key reason for this is that responsibility for the maintenance of standards has moved away from local government"*. (emphasis added)

3.12 The recommendations we have made are a package of interrelated changes to different aspects of the framework that, over a specified period of time, will in our view deliver the necessary improvements. In particular we recommend:

- moving to a more locally based system from January 2007;
- strengthening the independent composition of local Standards Committees;
- removing unnecessary restrictions on councillors representing their constituents; and

- clarifying the distinction between private and official conduct.

Taken together, our recommendations will enable the Standards Board to transform into a strategic regulator able to:

- establish and maintain the elements of a national framework within which Monitoring Officers, Standards Committees and councillors can manage ethical issues primarily at a local level;
- provide independent scrutiny of the operation of this framework, auditing performance and where necessary intervening until improvements have been made;
- support and enable Monitoring Officers, Standards Committees and councillors to deliver high standards of conduct in local government through self assessment tools, training materials and programmes and regional networks;
- work collaboratively with other regulators both in England and in the devolved administrations to improve standards of governance in local government; and
- investigate and determine (with the Adjudication Panel) those most serious complaints that pose a high risk to the reputation of local democracy.

3.13 The Standards Board in 2007 will therefore need to be very different to the Standards Board in 2004 if it is to achieve these aims. Its focus and the mix of skills and experience of its employees will need to change. The shift from a primary purpose of handling and investigating a large volume of complaints to the strategic approach described above will require a different allocation of resources. In the Committee's view this should in principle enable significant savings to be found from the current £9m annual budget of the Standards Board.

4. Embedding the Seven Principles of Public Life into Organisational Cultures

4.1 Embedding the Seven Principles of Public Life into organisational culture is a common thread that runs through this report. Our analysis and recommendations in Chapters 2 and 3 are

specifically designed to introduce proportionate arrangements to do just this in the area of public appointments by government departments and in the conduct of councillors in local government.

4.2 In this final chapter we review some of the key generic components that can be applied more widely in all public sector bodies to enhance their governance arrangements in an effective and proportionate manner. Inevitably much of this concerns learning and drawing upon good practice in specific areas for more general application across the public sector. This is not always straightforward. While it appears that many of us can readily recognise a healthy organisation with ethical behaviour at the heart of its culture (i.e. part and parcel of everyday operations) we all find it more difficult to describe the constituents parts which have made it so.

4.3 However intangible the issue of culture appears, the Committee believes that it is critical to delivering high standards of propriety in public life in a proportionate and effective manner. Learning from good practice must play a central role and we have identified three key areas for improvement:

- **Training and development.** We were particularly impressed with the innovative experienced based learning techniques pioneered by the Audit Commission which help organisations reach their own determinations of their strengths and weaknesses and allow the solutions to come from within rather than imposed from outside. The tools have the added benefit of allowing benchmarking against similar organisations and, if widely used, will provide useful aggregate data on ethical culture across the public sector;
- **Governance of propriety in managing conflicts of interest.** A very real challenge faces public bodies in how to involve people with current and relevant expertise in non-executives roles, while at the same time ensuring no conflict or perception of conflict between public and private interests. Continual vigilance, openness and a risk-based approach can help organisations achieve this balance. Two recent reports [4 and 5] have wide applicability and we recommend that the best practice so described should be adopted by all public bodies; and

- **‘Whistleblowing’ – or more accurately – a culture that encourages the challenge of inappropriate behaviour at all levels.** We have sought to distinguish between the ‘media’ driven definition of whistleblowing and the role it can play internally in a healthy ethical organisational culture. Here, more than in any other area we have considered, the principle of Leadership is paramount if organisations are to truly ‘live out’ the procedures that all have in place. The statutory framework [6] is a helpful driver but must be recognised as a ‘backstop’ which can provide redress when things go wrong not as a substitute for cultures that actively encourage challenge of inappropriate behaviour. We have recommended that leaders of public bodies should commit themselves to follow the elements of good practice developed by Public Concern at Work, the leading organisation in this field.

References

1. *Getting the Balance Right: Implementing Standards of Conduct in Public Life*, Committee on Standards in Public Life, January 2003.
2. *Standards of Conduct in Local Government* Third Report of the Committee on Standards in Public Life, July 1997, Cm 3702-1.
3. *Report of the Joint Committee on the Draft Local Government (Organisational Standards) Bill*, July 1999, HL 102-1, HC 542-1.
4. *Report by AHL Ltd, Commission for Architecture and the Built Environment, Audit of Conflicts of Interest*, June 2004, HC 678, 17 June 2004.
5. *Conflicts of Interest*, OCPA June 2004.
6. Public Interest Disclosure Act 1998.

LIST OF RECOMMENDATIONS

Chapter 2: Public Appointments		
RECOMMENDATION	MECHANISM	TIMEFRAME
R1. Departments should give serious consideration to giving their central appointments units operational responsibility for public appointments, particularly in cases where sponsor teams manage only one or two competitions a year.	Government Response to this Report	Immediate
R2. Annual Public Appointments Plans should be adopted as the key strategic document for departments to set out their policy and practice relating to the public appointments of chairs and board members of the public bodies they sponsor. These plans should be published documents, drawn up by the permanent secretary (in consultation, where appropriate, with the linked Public Appointments Commissioner) and reflecting the views of the Secretary of State.	Government Response to this Report	Immediate
R3. More systematic sharing of good practice in the making of appointments across public administration is urgently required. The Cabinet Office should convene an annual seminar of UK public appointments regulators and appointing authorities to exchange and debate good practice.	Government Response to this Report	Within one year
R4. In England, the Commissioner's Code of Practice paragraph 3.24 should be re-drawn, on the basis of the Civil Service Commissioners' Recruitment Code, at paragraphs 2.52, 2.53 and 2.54. This would permit ministerial involvement at short-listing stage in 'starred' public appointments where they have a particular interest in appointments to strategic posts within the limitations of the Seven Principles of Public Life, particularly Accountability, Openness and Objectivity.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R5. (a) The process for 'starred' appointments, i.e. senior competitions likely to attract the specific interest and involvement of Ministers, should be set out in the Code of Practice as a special starred category. (b) Starred appointments should be identified in annual, published, Public Appointments Plans which set out a department's public appointments record, policy and implementation plans. (c) For other appointments which are not starred, Ministers may wish and should be able to sign off the planning arrangements for the competition. They should not be consulted at short-list stage and should not be involved again until the post-interview final selection of the candidate to be appointed.	Government Response to this Report (Commissioner's Code of Practice) Government Response to this Report (Commissioner's Code of Practice) Government Response to this Report (Commissioner's Code of Practice)	Immediate Immediate Immediate

R6. Paragraphs 2.55, 2.56 and 2.57 of the Civil Service Commissioners' Recruitment Code should be incorporated into the Public Appointments Commissioner's Code of Practice for use in starred appointments.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R7. The Commissioner should consult urgently with appointing authorities to revise and develop paragraph 3.37 of the Code of Practice dealing with non-compliance so that there is a clear and unambiguous procedure for the resolution of disputes between the Commissioner and an appointing authority.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R8. The Commissioner for Public Appointments should exercise fully her functions under the Order in Council to maintain the principle of selection on merit in relation to public appointments. The Commissioner should not hesitate to publish a contemporaneous report or issue a statement (paragraph 3.37 of the Code of Practice notes that "the Commissioner may decide to comment publicly") setting out in detail where she has reasonable belief that an appointing authority has breached the Code of Practice. She should only do this after she has held a face-to-face meeting with the Minister concerned in an attempt to seek to resolve any dispute and it is clear the Minister will not accept her proposal.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R9. The 2002 Public Appointments Order in Council should be amended to include the reserve powers set out in sections (7) and (8) of the Public Appointments and Public Bodies etc (Scotland) Act 2003. These would enable the Commissioner, where an appointment has not been made, to direct Ministers to delay making an appointment until Parliament has considered the case.	Government Response to this Report (Commissioner's Code of Practice)	Immediate
R10. We recommend that The Responsibilities of an Accounting Officer and the Ministerial Code be amended to make reference to the explicit responsibility of permanent secretaries, as accounting officers for the propriety of public appointments made by their departments.	Government Response to this Report	Immediate
R11. (a) The Government should actively review the experience of setting up and running central lists in Northern Ireland, Scotland and Wales, the NHS Appointments Commission and the Commissioner's own Central List of 22 independent assessors with a view to producing proposals in conjunction with the Commissioner within one year for a proportionate, cost-effective, centrally-run system. (b) In the meantime, only independent assessors recruited to the Commissioner's Central List should be used for starred appointment competitions involving Ministers. Departments should continue recruiting and managing their own lists of independent assessors, on condition that they use an accreditation system run by OCPA which accredits assessors to be employed.	Government Response to this Report Government Response to this Report	Within one year Immediate

<p>R12. We recommend that OCPA and the NHS Appointments Commission should work together to produce integrated, competency-based, induction and development programmes for independent assessors, together with a model, light appraisal system. This should be the basis of an accreditation or 'kite-mark' without which an independent assessor would be unable to act.</p>	<p>Government Response to this Report OCA and NHS Appointments Commission</p>	<p>Within one year</p>
<p>R13. The political activity questionnaire was designed and intended for monitoring purposes only. We recommend that the Commissioner's Code of Practice should set out clearly that the questionnaire should not be shown to anyone involved in the selection process.</p>	<p>Government Response to this Report</p>	<p>Immediate</p>
<p>R14.</p> <p>(a) The 2002 Public Appointments Order in Council should be amended to allow the creation of a Board of Public Appointments Commissioners. The Board should be chaired by a First Public Appointments Commissioner.</p> <p>(b) Public Appointments Commissioners should each be linked to a small number of Departments, providing assistance to the Department in constructing and publishing annual departmental Public Appointments Plans. These plans should be the executive responsibility of the department and signed off by the Board of the Public Appointments Commission.</p> <p>(c) Public Appointment Commissioners should be available to chair selection panels for 'starred' appointments.</p>	<p>Government Response to this Report Legislation (Order in Council)</p> <p>Government Response to this Report</p> <p>Government Response to this Report</p>	<p>Immediate</p> <p>Immediate</p> <p>Immediate</p>

Chapter 3: The ethical standards framework for local government

RECOMMENDATION	MECHANISM	TIMEFRAME
NORTHERN IRELAND R15. Following the review of public administration, and upon the restoration of the Assembly in Northern Ireland, a Statutory Code of Conduct for Councillors should be introduced with a proportionate and locally-based framework for enforcement, drawing upon experience of other parts of the UK.	Legislation	Upon restoration of the Assembly
ENGLAND R16. Parish councils should remain with the ethical framework for England: the same principles of conduct should apply to all locally-elected representatives, irrespective of the size of authority (or the powers of that authority) to which they were elected.	N/A	N/A
R17. The Government should announce its intention to amend Part III of the Local Government Act 2000 in the parliamentary session 2005/06 to enable the sifting of complaints to be undertaken by local Standards Committees.	Government Response to this Report	Immediate
R18. The amendment to Part III of the Local Government Act 2000 should: <ul style="list-style-type: none"> • Place a duty on the Standards Board for England to delegate the responsibility for initial sifting of complaints to individual local Standards Committees. The delegation should be subject to the operation within a national framework prescribed by the Standards Board (and based upon criteria used by the Standards Board in sifting and referrals) by which local Standards Committees can decide: <ul style="list-style-type: none"> (i) whether to investigate a complaint or not (and if not whether mediation or conciliation between parties or general action in relation to awareness and understanding of the Code is appropriate); (ii) which complaints are of such potential seriousness they should be referred for national investigation; (iii) whether, following a local investigation, a complaint should be referred to the Adjudication Panel; or (iv) to hear and determine the case, with an appropriate penalty where necessary; or (v) accept that no breach has occurred; or (vi) to instruct the monitoring officer and/or Standards Committee chair to instigate mediation or conciliation between parties or general action in relation to awareness and understanding of the Code. • Introduce a requirement for Standards Committees to report annually to the Standards Board and full Council on the operation of the ethical framework; 	Amendment to Part III of the Local Government Act 2000	During parliamentary session 2005/6 and implemented from January 2007

<ul style="list-style-type: none"> • Introduce a requirement for each Standards Committee and the Standards Boards to determine and publish targets for the completion of each stage in the complaints-handling process they are responsible for and to report on these as part of their respective annual reports; and • Provide a power for the Standards Board to audit the operation of the framework by a local Standards Committee and, if necessary following the audit, to remove the delegation until satisfied that necessary remedial action has been undertaken. 		
R19. The Government should introduce, as a matter of urgency, secondary legislation to require a majority of independent members and an independent chair for Standards Committees and sub-committees in England. This is a critical element of our proposals to improve the existing system and to lay the ground for the subsequent introduction of the locally-based system.	Secondary Legislation	Immediate
<p>R20. Prior to the introduction of the locally-based system, all complaints assessed by the Standards Board as not requiring any investigation should also be sent to the local monitoring officer and Standards Committee so that they:</p> <ul style="list-style-type: none"> (i) are fully aware of complaints made within their jurisdiction; (ii) can become familiar with the criteria used to decide whether an investigation is justified or not; and (iii) judge whether the complaints indicate that some informal mediation between members or parties might be required or general awareness raising or training. 	Standards Board's Operations	Immediate
R21. That the Standards Board should take steps to communicate more robustly and publicly to complainants, members and the public more generally, those minor, trivial, vexatious and politically inspired complaints which are inappropriate to be dealt with under the ethical framework (following the example of the Local Government Ombudsman for Wales).	Standards Board's Operations	Immediate
R22. The Committee welcomes the steps taken by the Standards Board to resolve delays and backlogs in investigations. These measures should be further bolstered by taking full advantage of the new s66 regulations to refer to a local level a steadily increasing proportion of complaints judged worthy of investigation. In light of our recommendations to enable initial complaints-handling to be done at the local level, the experience of operating the s66 regulations over the next two years should be used by the Standards Board to develop the framework within which local Standards Committees will decide whether to refer a complaint for investigation by the Standards Board.	Standards Board's Operations	Immediate

R23. The Standards Board should review its Human Resource Management policies, including pay scales, to ensure that it puts a priority on secondments and transfers from local authorities to the referral and investigations units, thereby increasing and refreshing the level of local government experience.	Standards Board's Operations	Immediate. Implemented before January 2007
R24. The general principles, currently contained in a separate Order, should be incorporated into the Model Code. This will add clarity about the fundamental purpose of the Code and help provide a context for members behind some of the more detailed provisions in the Code. It will also make the Model Code more relevant to members of the public and assist in providing a route into the Code when considering making a complaint.	Standards Board's review of the Model Code of Conduct	April 2005
R25. The phrase "in any other circumstance" should be removed from the Model Code in England (paragraphs 4 and 5 of schedule 1) so as to add clarity to the distinction between private and official conduct.	Standards Board's Review of the Model Code of Conduct	April 2005
R26. Failure to register an interest (financial or other) should normally be treated as a matter for local investigation and determination. This should be reflected in the operation of the new s66 regulations, and in the new locally-based system.	Standards Board's review of the Model Code of Conduct, Standards Board referral criteria	April 2005
<p>R27. The following principles should apply where members are appointed, or nominated, to an outside body by their local authority (or have their membership approved by their local authority); are a member of another relevant authority; or are a member of another public body in which they hold a position of general control or management. They should be free to speak but not vote, subject to:</p> <ul style="list-style-type: none"> (i) the declaration of a personal interest; (ii) the matter before the Council/Committee does not relate to an application by the outside body for any licence, consent or an approval or any objection to such matters or to any statutory order or regulation to be made by the local authority; and (iii) any representations must be made in an open and transparent manner. 	Standards Board's review of the Model Code of Conduct and, if necessary, primary legislation	April 2005
<p>R28. In planning decisions the ability of elected members to represent constituents' interests where they have personal and prejudicial interests has been unnecessarily diminished. This should be changed to give any elected member the right to speak (but not vote) for their constituents at a planning committee meeting or at any other quasi-regulatory meeting, provided:</p> <ul style="list-style-type: none"> (i) a declaration of personal interest is made, including the nature of the interest; (ii) the representations are made in an open and transparent manner; and 	Standards Board's review of the Model Code of Conduct and, if necessary, primary legislation	April 2005

(iii) the member making the representations (whether a member of the Committee or not) withdraws at the completion of their representations.		
R29. The three principal regulators (Standards Board for England, Local Government Ombudsman for Wales, and Standards Commission for Scotland) should put in place formal arrangements for the sharing of experiences and best practice. This should be extended to include the body with designated responsibility for enforcement of a new statutory framework in Northern Ireland.	The three principal regulators	Immediate
R30. Prior to the introduction of the locally-based system consideration should be given as part of the review of the Code of Conduct to amend the duty to report a possible breach of the Code so that it becomes a “duty to report a possible breach to the monitoring officer and Standards Committee chair” who would then be responsible for deciding whether a formal complaint to the Standards Board should be made.	Standards Board’s review of the Model Code of Conduct	April 2005
R31. All local authorities should consider using the Audit Commission/Standards Board Ethical Governance Audit tool and facilitated workshop to self-assess their arrangements for ensuring ethical standards.	Local authorities and Audit Commission	Immediate
R32. The Standards Board should develop model training and development materials that can be used to provide monitoring officers and Standards Committee members with the key competencies required to sift, investigate and determine complaints under the ethical framework. All monitoring officers and Standards Committee members should have undertaken training using this material by January 2007.	Standards Board’s Operations	Immediate
R33. The Standards Board should develop further the concept of regional forums to facilitate regional support networks for monitoring officers and Standards Committee members.	Standards Board’s Operations	Ongoing

Chapter 4: Embedding the Seven Principles of Public Life into organisational cultures

RECOMMENDATION	MECHANISM	TIMEFRAME
R34. Boards of all public bodies should, in their procedures, provide for a right of access for individual board members to a senior official in their sponsor department, and through them to the permanent secretary and Minister if necessary, to raise concerns about systemic and sustained failures in either the board's processes or strategic decisions. Before exercising this right of access, a board member should raise their concerns with the chair or the board as a whole.	Government response to this report. Boards of all public bodies	Within one year
R35. The boards of all public bodies should commit themselves to the adoption and use of the Audit Commission's self-assessment tool, Changing Organisational Culture Audit, which is especially designed to help embed a good conduct culture.	Government response to this report. Boards of all public bodies	Within one year
R36. The Commissioner's Code of Practice on Public Appointments should be reviewed and revised as a matter of urgency to reflect and incorporate the principal recommendations of PricewaterhouseCooper's audit report, <i>Conflicts of Interest</i> , produced for the Office of the Commissioner for Public Appointments in June 2004 and the general recommendations in the report by AHL Ltd, <i>Commission for Architecture and the Built Environment, Audit of Conflicts of Interest</i> , HC 678, 17 June 2004.	The Commissioner for Public Appointments	Within three months
R37. All regulators should review their procedures for handling whistleblowing by individuals in bodies under their jurisdiction, drawing upon best practice (for example the Audit Commission and Financial Services Authority).	Government response to this report	Within one year
<p>R38. Leaders of public bodies should reiterate their commitment to the effective implementation of the Public Interest Disclosure Act 1998 and ensure its principles and provisions are widely known and applicable in their own organisation. They should commit their organisations to following the four key elements of good practice i.e.</p> <ul style="list-style-type: none"> (i) Ensuring that staff are aware of and trust the whistleblowing avenues; (ii) Provision of realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity; (iii) Continual review of how the procedures work in practice; and (iv) Regular communication to staff about the avenues open to them. 	Government response to this report. Leaders of all public bodies	Within one year

ABOUT THE COMMITTEE

Terms of reference

The Committee on Standards in Public Life was established, under the chairmanship of the Rt Hon The Lord Nolan, by the then Prime Minister, the Rt Hon John Major, in October 1994, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

The term “holders of public office” includes: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all NDPBs and of NHS bodies; non-Ministerial office-holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.

On 12 November 1997, the Prime Minister, the Rt Hon Tony Blair MP announced additional terms of reference:

“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”

The Committee is an independent advisory Non-Departmental Public Body (NDPB). The Prime Minister appoints its members for renewable periods of up to three years.

The remit of the Committee excludes investigation of individual allegations of misconduct.

Membership of the Committee as at 1 January 2005

Sir Alistair Graham (Chairman), Lloyd Clarke QPM, Rita Donaghy OBE, Professor Hazel Genn CBE, Dame Patricia Hodgson DBE, The Rt Hon Baroness Jay of Paddington, Baroness Maddock, The Rt Hon Gillian Shephard DL MP, Dr Elizabeth Vallance, Dr Brian Woods-Scawen DL.

Copies of the Tenth Report of the Committee on Standards in Public Life *Getting the Balance Right: Implementing Standards of Conduct in Public Life* (Cm 6407) are available, priced £20.50, from The Stationary Office, their agents and good booksellers or online www.tso.co.uk/bookshop.

The main report can be accessed via the TSO website www.official-documents.co.uk or through the Committee website www.public-standards.gov.uk. Further information about the Committee is also available from this website.

Additional copies of the summary are available from the Committee by telephoning 0800 692 1516.

Committee on Standards in Public Life, January 2005

Tel: 020 7276 2595

Fax: 020 7276 2585

Email: standards.evidence@gtnet.gov.uk

The Committee on Standards in Public Life
35 Great Smith Street
London SW1P 3BQ

Tel: +44 (0)20 7276 2595
Fax: +44 (0)20 7276 2585

Internet: www.public-standards.gov.uk
Email: Standards.evidence@gtnet.gov.uk

January 2005



A Code for the future

An introduction to the review of the Code of Conduct for members

Consultation

Introduction

The Standards Board for England is reviewing the Code of Conduct and we are inviting you to help shape its future. It has been nearly three years since the Code came into force, and we believe now is a good time to examine its effectiveness and address the issues that have given rise to debate within the local government community.

We have been asked to conduct this review by the Government. The review was launched in September 2004 at the Third Annual Assembly of Standards Committees by the Rt Hon Nick Raynsford MP, Minister of State for Local and Regional Government. He stressed that the Government does not wish to dilute the underlying principles of the Code but rather seeks to see what lessons may be learnt from our experiences of working with it.

We have been listening to your views on the Code of Conduct since then, both in workshops at the conference and as we have met with members, officers and other groups across the country, and have identified a number of key areas for review which we have shaped into the 29 questions listed inside this leaflet. Now it's your turn to tell us what you think.

Who we are consulting

We want to involve everyone who has an interest in the Code of Conduct in this review, and welcome responses from all. As well as the members and officers of relevant authorities, and other groups in the local government family, we are reaching out to organisations that represent the public, consumer groups, and political parties.

Key areas

- Public interest defence in relation to disclosure of confidential information
- The duty for members to report misconduct by colleagues
- The line between public and private conduct
- Personal and prejudicial interests
- Registering interests

Principles behind the Code

The Code of Conduct is founded on ten general principles set out in the *Relevant Authorities (General Principles) Order 2001*, derived from recommendations by the Committee on Standards in Public Life.

The ten general principles underpin and steer the provisions of the Code of Conduct and are fundamental to its interpretation. The *Local Government Act 2000* requires the Code of Conduct to be consistent with the general principles but it does not currently incorporate them. They are:

- Selflessness
- Honesty and integrity
- Objectivity
- Accountability
- Openness
- Personal judgement
- Respect for others
- Duty to uphold the law
- Stewardship
- Leadership

questions

These questions cover the range of areas that we know are of most concern to you, and we are very interested to hear your opinions on all of them. We also welcome your opinions on other issues not covered here. Once you have read the questions, you can turn to the back of this leaflet for instructions on submitting your answers.

Consultation paper

For those of you who want more detailed information, we have produced a formal consultation paper that sets out the full context to each question and includes background information on the issues. The paper is available in both hard copy and online.

View and download the paper online at: www.standardsboard.co.uk/codereview/.

To order a printed copy, call 020 7378 5110 or e-mail publications@standardsboard.co.uk.

The general principles

1

Should the ten general principles be incorporated as a preamble to the Code of Conduct?

2

Are there any other principles which should be included in the Code of Conduct?

Disrespect and freedom of speech

3

Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

4

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?

Confidential information

5

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?

6

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?

Disrepute and private conduct

7

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?

8

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?

Misuse of resources

9

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?

10

If so, how could we define 'inappropriate political purposes'?

11

Is the Code of Conduct right not to distinguish between physical and electronic resources?

Duty to report breaches

12

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?

13

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?

14

Should there be a further provision about making false, malicious or politically-motivated allegations?

15

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?

Personal interests

16

Do you think the term 'friend' requires further definition in the Code of Conduct?

17

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?

18

Should a new category of 'public service interests' be created, relating to service on other public bodies and which is subject to different rules of conduct?

19

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?

20

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?

21

Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

Prejudicial interests

22

Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

23

Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

Registration of interests

24

Should members employed in areas of sensitive employment, such as the security services, need to declare their occupation in the public register of interests?

25

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?

Gifts and hospitality

26

Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?

27

Should members also need to declare offers of gifts and hospitality that are declined?

28

Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this?

29

Is £25 is an appropriate threshold for the declaration of gifts and hospitality?

How to respond

There are several ways for you to respond to this consultation and make your views known. Please see the instructions to the right. You can answer any or all of the questions directly, or you can send us more general thoughts and contributions to the debate if preferred.

Don't forget, the issues raised in this leaflet are discussed in more detail in the full consultation paper, which is available in hard copy and online. You can request a copy and view it online using the instructions here. Alternatively, call 020 7378 5110 and leave your details.

Please indicate on your response if you are representing a particular organisation, and in what capacity you are responding.

What next?

Based on your responses, we will make a number of recommendations to the Office of the Deputy Prime Minister and share these with the local government community. We will also publish a summary of responses on our website.

It is up to the Minister of State for Local and Regional Government to consider the Government's response and make any changes to the Code of Conduct as they see fit. We hope that any changes to the Code will be agreed by the end of 2005.

Confidentiality and publication

Your responses may be published or otherwise made public unless you ask us to treat them as confidential. If submitting your response by e-mail, please ensure you include your request in the body of the message. Any automatic confidentiality disclaimers generated by your organisation's IT system will be ignored.

Confidential responses will be included in any statistical summary of the numbers of comments received and views expressed. Correspondents should also be aware that, in exceptional circumstances, confidentiality cannot always be guaranteed — for example, where a response includes evidence of serious crime.

By post

Send your responses for the attention of **Emma Ramano** at:

The Standards Board for England
First floor, Cottons Centre
Cottons Lane
London SE1 2QG

By e-mail

Write to enquiries@standardsboard.co.uk with the subject 'Code consultation'.

Online

Complete the form and submit your thoughts online at:

www.standardsboard.co.uk/codereview/

Deadline for responses: 17 June 2005.