



## **Standards Committee – June 2007**

### **Revised Code of Conduct for Members**

#### **Purpose of report**

A revised Code of Conduct for Members (the Code) has been issued by central government and came into force on 3 May 2007. Every local authority must adopt the Code (with or without local additions) by a resolution of Council within six months of it coming into force, i.e. on or before 1 October 2007. Where an authority fails to adopt the Code by that date, the mandatory provisions of the Code will apply automatically, until the authority adopts the Code.

This report provides details of the revised code and comments on the provisions.

#### **Recommendations**

1. That the Standards Committee recommends that Council
  - a. adopts the revised Code of Conduct for members effective from 3 July 2007;
  - b. amends the Constitution, by the replacement of the old code with the insertion of the new code (with a copy of the general principles) contained within Appendix 1 and the Local Authority Code of Publicity made under the Local Government Act 1986.
2. That the Standards Committee recommends
  - a. That all members be notified of the need to renew their registration of interests;
  - b. That a copy of the revised Code of Conduct be provided to every member of the authority;
  - c. That the Monitoring Officer be requested to secure that training on the new Code is made available to all members of the Council;
  - d. Ensure that copies of the Code are available for inspection at the authority's offices;
  - e. Publish notice of the adoption of the Code in the Council's newspaper and in a local newspaper, and
  - f. Send a copy of the Code as adopted to the Standards Board for England.

## **Resource and legal considerations**

### Financial

The only financial resource implication is for the inclusion and printing costs of the code being inserted in the Council's Constitution and the provision of training. These costs can be funded from existing budgets.

### Legal

If the adoption of the code is approved by the Standards Committee, it would subsequently have to be approved by Council as a matter of law and under the Constitution as it is proposing an amendment to the Constitution.

## **Citizen impact**

It is important that in delivering all of its policies the Council and its members are seen to act in a lawful manner at all times which is transparent and for which they are accountable and can be held responsible. The citizens of the Borough must have confidence in the ability of the Council to act lawfully at all times and in accordance with legislation.

## **Environmental impact**

None arising from this report.

## **Performance and risk management issues**

### Risk Management

There are no perceived risks to implementing such a code and in fact is mandatory. The early adoption of the code should help to reduce risk across the Council by creating further clarity in respect of corporate governance arrangements. Further, it will send out strong signal that the Council, through its members places a high priority on good corporate governance and probity to be at the heart of good local government.

### Performance Management

The adoption of the code should strengthen the Council's governance for the purpose of continued CPA inspections.

## **Equality implications**

The code requires all members to not to do anything which may cause the authority to breach any of the equality enactments.

## **Consultation**

The revised code of conduct underwent significant consultation. The Standards Committee held a consultation exercise with members of this authority last year and submitted a response to the Standards Board for England. The Council has no discretion in the adoption of the mandatory provisions of the code.

**Background papers**

All published.

**Signed:**

**Assistant Director of Legal  
and Constitutional Services**

**Date:** 30 May 2007

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## **Statutory Timetable**

A revised Code of Conduct, (the Code) for Members has been issued and came into force on 3 May 2007. Every local authority must adopt the Code (with or without local additions) by a resolution of Council within six months of it coming into force, i.e. on or before 1 October 2007. Where an authority fails to adopt the Code by that date, the mandatory provisions of the Code apply automatically, until the authority adopts the Code.

Once an authority has adopted the Code, it must –

- a. Ensure that copies of the Code are available for inspection at the authority's offices;
- b. Publish notice of the adoption of the Code in any newspaper which they publish and in a local newspaper, and
- c. Send a copy of the Code as adopted to the Standards Board for England<sup>i</sup>

## **Revisions to the code**

Although the Code follows the same broad structure as the old Code of Conduct, it makes substantial changes.

- a. In terms of when the Code applies to Councillors, the Code follows the judgment of the High Court in the Livingstone case, to apply only to conduct in the performance of a member's functions as a member, and not to apply to events in a member's private life. The exception to this relates to criminal conduct, which the Code purports to cover even if it occurs in a member's private life.
- b. The general conduct rules are extended to include new offences of bullying and of intimidation and victimisation in respect of standards proceedings. The offence of failing to report breaches of the Code of Conduct by other members is deleted, and a new public interest defence is introduced for breach of confidentiality.
- c. The provisions of interests are re-ordered and new relaxations are introduced to enable a member with a prejudicial interest to make representations to a meeting in the same manner as members of the public, and to participate fully where the interest is shared with the majority of residents of his/her ward or electoral division.
- d. The former Paragraph 7 of the old Code of Conduct, the duty to make a formal complaint to the Standards Board for England in respect of an apparent failure to comply with the Code of Conduct by another member of the authority, is omitted from the revised Code of Conduct.

The full text of the revised Code is set out in Appendix 1, together with a commentary on its provisions.

## **Transition to the revised Code of Conduct**

Members will not have to give a new undertaking to observe the Code, provided that they have previously given an undertaking to observe the old Code of Conduct, as that undertaking was actually “to observe the authority’s Code of Conduct for the time being.”

The Department for Communities and Local Government has failed to include any transitional provision which would have carried forward existing registrations of members’ interests. Accordingly, every member will be required to make a new registration of interests within 28 days of the Council adopting the revised Code of Conduct.

Existing allegations of misconduct, and any further allegations of misconduct prior to adoption of the revised Code of Conduct, will continue to be judged in accordance with the old Code of Conduct.

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**Appendix 1**  
**The Revised Code of Conduct for Members**

<p style="text-align: center;"><b>A. The Statutory Instrument</b></p>	<p style="text-align: center;"><b>Commentary</b></p>
<p><b>Citation, commencement, application and interpretation</b></p> <p>1. (1) This Order may be cited as the Local Authorities (Model Code of Conduct) Order 2007 and comes into force on 3<sup>rd</sup> May 2007</p> <p>(2) This Order applies—</p> <p>(a) in relation to police authorities in England and Wales; and</p> <p>(b) in relation to the following authorities in England—</p> <ul style="list-style-type: none"> <li>(i) a county council;</li> <li>(ii) a district council;</li> <li>(iii) a London borough council;</li> <li>(iv) a parish council;</li> <li>(v) the Greater London Authority;</li> <li>(vi) the Metropolitan Police Authority;</li> <li>(vii) the London Fire and Emergency Planning Authority;</li> <li>(viii) the Common Council of the City of London;</li> <li>(ix) the Council of the Isles of Scilly;</li> <li>(x) a fire and rescue authority;</li> <li>(xi) a joint authority;</li> <li>(xii) the Broads Authority; and</li> </ul>	<p>1.1 The Code of Conduct came into force on 3 May 2007 and each local authority must adopt all the mandatory provisions of the Code of Conduct, with or without additions, by a resolution of full Council within six months of the date on which it was made, i.e. on or before 1 October 2007.</p> <p>1.2 This lists the authorities that are covered by the revised Code of Conduct .“Joint Authority” means Joint Waste Boards and PTEs established on the abolition of the Greater London Council and the Metropolitan County Councils under Part IV of the Local Government Act 1985.</p>

<p>(xiii) a National Park authority, and references to “authority” are construed accordingly.</p>	
<p><b>Model Code of Conduct</b></p> <p>2. (1) The code set out in the Schedule to this Order ("the Code") has effect as the model code issued by the Secretary of State under section 50 of the Local Government Act 2000 as regards the conduct which is expected of members and co-opted members of an authority.</p> <p>(2) Subject to paragraphs (3) to (6), every provision of the Code in the Schedule to this Order is mandatory for an authority.</p> <p>(3) Paragraph 6(c) of the Code is not mandatory for police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, fire and rescue authorities and joint authorities.</p> <p>(4) Paragraph 7 of the Code is not mandatory for parish councils.</p> <p>(5) Subject to sub-paragraph (6)(c) and (d) below, paragraphs 10(2)(c)(i) and (ii), 11 and 12(2) of the Code are mandatory only for county councils, district councils and London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly.</p>	<p>2.1 The Government has issued one Codes of Conduct for different types of authority.</p> <p>2.2 Some of the provisions are optional for particular types of authority.</p> <p>2.3 This makes the requirement to have regard to the Local Authority Code of Publicity (as set out in Paragraph 6(c)) optional for authorities. However it is mandatory for this Council.</p> <p>2.4 This makes the requirements to have regard to officers’ advice and to give reasons for decisions</p> <p>2.5 This provides that the provisions set out, below are mandatory to this Council–</p> <p>Paragraphs 10(2)(c)(i) and (ii), which enable members with council houses or children at a school to participate in matters relating to housing and education. In practice, these provisions are only relevant to housing and education authorities.</p>



<p>(6) The following provisions of the Code are mandatory only for an authority which is operating executive arrangements—</p> <p>(a) in paragraph 1(4), in the definition of "meeting"—</p> <p>(i) sub-paragraph (b);</p> <p>(ii) in sub-paragraph (c), the words "or its executive's" and ", or area committees";</p> <p>(b) paragraphs 9(6), 9(7) and 12(1)(b);</p> <p>(c) in paragraph 11(a), the words "your authority's executive or"</p> <p>(d) in paragraph 11(b), the word "executive,"; and</p> <p>(e) in paragraph 12(2), the words in brackets.</p>	<p>Paragraph 11, which relates to members of Overview Scrutiny Committees, , and</p> <p>Paragraph 12(2), which would allow a member to have the same rights of audience at a meeting as are granted to any member of the public, even where he/she has a prejudicial interest, but then not to participate in the decision-making process.. This is a useful relaxation, reversing much of the effect of Richardson v North Yorkshire County Council..</p> <p>2.6 Makes mandatory provisions for councils operating executive arrangements.</p>
<p><b>Disapplication</b></p> <p>3. The following provisions shall not apply (where they are capable of doing so) to an authority which has adopted a code of conduct or to which such a code applies—</p> <p>(a) sections 94 to 98 and 105 to the Local Government Act 1972];</p> <p>(b) section 30(3A) of the Local Government Act 1974;</p> <p>(c) regulations made or a code issued under section 19 and 31 of the Local Government and Housing Act 1989;</p>	<p>3. A number of provisions, such as the old “pecuniary interest” regime and “surcharge”, were suspended as and when an authority first adopted the Code of Conduct for Members. As this Order replaces the original Code of Conduct Order, Article 3 continues that suspension.</p>

<ul style="list-style-type: none"> <li>(d) paragraphs 9 and 10 of Schedule 7 to the Environment Act 1995; and</li> <li>(e) any guidance issued under section 66 of the Greater London Authority Act 1999.</li> </ul>	
<p><b>Revocation and savings</b></p> <p><b>4.</b> (1) Subject to paragraphs (2) and (3), the following orders are revoked—</p> <ul style="list-style-type: none"> <li>(a) the Local Authorities (Model Code of Conduct) (England) Order 2001;</li> <li>(b) the Parish Councils (Model Code of Conduct) Order 2001;</li> <li>(c) the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001; and</li> <li>(d) the Police Authorities (Model Code of Conduct) Order 2001.</li> </ul> <p>(2) The Orders referred to in paragraph (1) continue to have effect for the purposes of and for purposes connected with —</p> <ul style="list-style-type: none"> <li>(a) the investigation of any written allegation under Part 3 of the Local Government Act 2000, where that allegation relates to conduct which took place before the date when, pursuant to section 51 of that Act—</li> </ul>	<p>4.1 This lists the former statutory instruments that have been repealed</p> <p>4.2 Provides that allegations made in respect of misconduct which occurred prior to adoption of the revised Code will continue to be judged in accordance with the old Code. There is no time limit for making complaints in respect of conduct which occurred under the old Code of Conduct.</p> <p>4.3 Every member will be required to make a new registration of interests within 28 days of the day on which the authority adopts the revised Code of Conduct.</p> <p>.</p>

<p>(i) the authority adopts a code of conduct incorporating the mandatory provisions of the Code in the Schedule to this Order in place of their existing code of conduct;</p> <p>(ii) the authority revises their existing code of conduct to incorporate the mandatory provisions of the Code in the Schedule to this Order; or</p> <p>(iii) the mandatory provisions of the Code in the Schedule to this Order apply to members or co-opted members of the authority under section 51(5)(b) of that Act;</p> <p>(b) the adjudication of a matter raised in such an allegation; and</p> <p>(c) an appeal against the decision of an interim case tribunal or case tribunal in relation to such an allegation.</p> <p>(3) Any order made under section 83 of the Local Government Act 1972 shall have effect for the purpose of prescribing the form of a declaration of acceptance of office in relation to a county council, district council, London borough council and a parish council.</p>	
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## B. THE MODEL CODE OF CONDUCT

### PART 1

#### General Provisions

##### Introduction and interpretation

1. (1) This Code applies to **you** as a member of an authority.
  - (2) You should read this Code together with the general principles prescribed by the Secretary of State.
  - (3) It is your responsibility to comply with the provisions of this Code.
  - (4) In this Code—

"meeting" means any meeting of—

    - (a) the authority;
    - (b) the executive of the authority;
    - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.
  - (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee

- 1.1 That code applies to members of the council.
- 1.2 The Code is drafted against the background of the General Principles (appended at the end of this report), but the General Principles do not themselves form a part of the Code.
- 1.3. Whilst the authority's Monitoring Officer may advise on the application of the Code, Paragraph 1(3) makes it clear that he/she cannot take a decision on behalf of the member or make a declaration or registration on his/her behalf, and that it is for the individual member to ensure that he/she complies with the requirements of the Code.
- 1.4. The definition of "meeting" applies only to formal meetings, and not to informal meetings with other members or with officers. They may be called "panels", "working parties" or "project groups", but if they are recognised as a body, then they must in law be one of these listed bodies, and therefore subject to the rules on composition and public access. Otherwise, they simply comprise a number of individual members, rather than a recognised body.

shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000

1.5. There are a number of new phrases in the Code which are not defined in the Code. In due course the Standards Board for England may issue guidance to assist in the definition of such phrases, which include

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- a. “Bullying” – Paragraph 3(1)(b) – The only public definition of bullying is currently the ACAS definition, as follows:

“Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress...”

This definition does not cover single incidents and requires evidence of a positive intent on the part of the bully.

- b. “Close personal association” – Paragraph 8(2)(a) – This phrase replaces the word “friend” as used in the old Code, and is presumably intended to be rather broader than “friend”. The juxtaposition to the word “family” suggests that this means a “personal” as opposed to “business” association. But the revised Code of Conduct provides no guidance on how close is “close”. It also fails to provide any guidance as to whether this new formulation would cover an enemy – a clear gap in the old Code of

	<p>Conduct.</p> <ul style="list-style-type: none"><li>c. “Family” – Paragraph 8(2)(a) – The old Code used and defined the word “relative”. The new Code uses “family”, but fails to define it. On the basis that “relative” required either a blood tie or living as one household. “Family” could cover the same ground but exclude relatives who are not immediate family or it could be taken as including more remote blood relatives, even if living separately?</li><li>a. “In the public interest” – Paragraph 4(a)(iv)(aa) – It is likely that this will be interpreted in accordance with the use of the phrase in the Freedom or Information Act and the Public Interest Disclosure Act.</li><li>b. “Relates to” – This phrase is used in Paragraph 8(1)(a) in the form “relates to or is likely to affect”, and is fundamental to the definition of a personal interest. In practice, if the matter under consideration “relates to” a particular person or body, a decision on the matter will inevitably “affect” that person or body. So it is unclear whether the phrase “relates to” adds anything to “is likely to affect”.</li><li>c. “Representative” – Paragraph 2(1)(b) and 2(5)(a) –At present, SBE advises that any member who is nominated or appointed to an outside body by the authority is a representative. But the drafting of the Code, by referring to those members who have been</li></ul>
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	<p>appointed as representatives, necessarily implies the possibility of being appointed not as a representative. So there must be something, such as the element of control, which causes some appointees to be representatives. As a further point, this suggests that a member who is appointed as a trustee or as a company director, where he or she would be under conflicting duty to act in the best interests of the beneficiaries or of the company, cannot also be under a duty to act in the public interest and therefore cannot be a representative of the authority. I would suggest that a representative is a member who is appointed or nominated by the authority on the basis that he/she will act in that capacity in the best interests of the authority.</p>
<p><b>Scope</b></p> <p>2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—</p> <ul style="list-style-type: none"> <li>(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or</li> <li>(b) act, claim to act or give the impression you are acting as a representative of your authority,</li> </ul> <p>and references to your official capacity are construed accordingly.</p> <p>(2) Subject to sub-paragraphs (3) and (4), this Code does not</p>	<p>2.1. The old Code of Conduct only applied when the member was actually discharging the functions of the authority, or of his/her office or acting as a representative of the authority. In the Livingstone case, the High Court held that this should also be considered to cover the case of a member who wilfully or recklessly acted outside his powers for personal advantage, and that such actions should be regarded as being within the performance of his/her functions as a member. Paragraph 2(1)(b) seeks to remedy this loophole, by providing that the Code will apply where the member claims to act or gives the impression that he/she is acting as a representative of the authority. In</p>

have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

this context, the use of the phrase “as a representative” does not assist, as it could be considered to be limited to the circumstances set out in Paragraph 2(5), namely when appointed to another authority or body. However, in Paragraph 2(1) it probably means simply claiming to act or giving the impression of acting “as a member of the authority or on behalf of the authority.”

2.2 In the Livingstone case, the High Court held that, because the member’s undertaking to observe the Code of Conduct extended only to conduct “in performing his functions” (as a member), the Code of Conduct could not apply to conduct in a member’s private life, except where the member misused his/her position as a Councillor in his/her private life for personal advantage. The revised Code therefore provides that the Code of Conduct shall not have effect except in relation to conduct by a member in, or purportedly in, his/her official capacity.

2.3 Provides that particular paragraphs of the Code, such as the requirement not to bring your office or authority into disrespect, shall also have effect in relation to conduct “at any other time” (i.e. outside the member’s official capacity) where that conduct constitutes a criminal offence for which the member has been convicted.

2.4 Extends this to apply to a criminal offence which occurred before the member was elected, co-opted or appointed as a member, where the conviction for that offence occurs after the member has been so elected, co-opted or appointed.



Paragraph 2(4) is drafted in such a way that it is not the fact of conviction, but the original criminal conduct which is to be treated as the breach of the Code. That criminal action may have occurred before the person became a member or even before the present Code of Conduct came into force, and it does not amount to misconduct at the time that it occurs. However, if the member is then convicted of the offence once he/she has become a member and the revised Code is in force, that past conduct is then retrospectively turned into misconduct. As there is a presumption in law against retrospective legislation, it is open to doubt whether such a provision, whereby conduct which was not a breach of the Code at the time that it occurred is subsequently converted into a breach of the Code of Conduct, would be upheld by a court of law.

Note that the Case Tribunal hearing in respect of Ken Livingstone (APE 317) held that the particular circumstances of the events complained of, and the fact that Ken Livingstone had done enough to make it clear to the complainant that he did not regard himself as performing his functions as Mayor of London at the time of those events, was enough to take him outside the scope of "performing his functions". This preliminary decision of the Case Tribunal was not disapproved by the subsequent High Court judgment, and may be taken to indicate that where a member is not directly discharging the business of the authority but is approached as a member by a member of the public, he/she can take him/herself outside the scope of the Code of Conduct by making it clear that he/she regards him/herself as acting in an entirely private

capacity.

2.5 A member will be subject to the Code where he/she acts as a “representative” of the authority on another body. The Code fails to provide any definition of what constitutes acting as a “representative” of the authority. The Standards Board has advised that a member is a representative in any circumstances in which the authority has appointed or nominated, or approved his or her appointment or nomination, to an outside body. But if a member can be appointed as a representative, it is possible that he or she can equally be appointed but not as a representative. So there must be something about the appointment or nomination which determines whether the member is or is not a representative. I would suggest that, in order to be a representative, the authority must be able to direct the member to act in the interests of the authority, or to withdraw the appointment and secure the appointment of a more compliant member in the event that the member fails to accord with such an instruction. On that basis, a member would only be a “representative” of the authority on another body if he/she had been appointed or nominated by the authority on the basis that he or she should act in that capacity in the best interests of the authority.

Note that acting as a representative, in the sense of external visits on behalf of the authority, are now covered by Paragraph 2(1) as coming within the conduct of the authority’s business or acting as a representative of the authority.

## General obligations

3. (1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

3.1 The provision requiring a member to treat others with respect remains unchanged. However, the revised Code of Conduct introduces new offences of bullying and of intimidation in connection with standards cases. The introduction of a new prohibition on bullying means that many allegations which have previously been treated as a failure to treat with respect will now be taken under the express prohibition on bullying.

3.2a The “equality” requirement is re-drafted from a direct obligation on the member not to discriminate unlawfully, to become an obligation not to cause the authority to breach any of the equality enactments. This reflects a preliminary decision of the Case Tribunal in respect of the Islington cases (APE 0216) to the effect that an Employment Tribunal has exclusive jurisdiction to find that a member had discriminated unlawfully (in the terms of the old Code of Conduct) in respect of employment, so that a Standards Committee or Case Tribunal was not competent to make such a finding. As much of the equalities legislation is drafted in terms of obligations on the authority, the new formulation may be an improvement on the previous Code but it does mean that a case where the conduct of the member amounted to unlawful discrimination on the part of the member without causing the authority itself to be in breach of its equality obligations would still have to be dealt with as disreputable conduct or as a failure to treat with respect.

	<p>3.2b. The prohibition on bullying is new. The Code of Conduct does not provide a definition of what constitutes “bullying”. The only available definition is the ACAS definition, as follows:</p> <p>“Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress...”</p> <p>If this definition were to be adopted, it would not cover isolated incidents as opposed to courses of conduct, and would require a positive intent on the part of the bully.</p>
<p><b>4. You must not—</b></p> <p>(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—</p> <p>(i) you have the consent of a person authorised to give it;</p> <p>(ii) you are required by law to do so;</p> <p>(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to</p>	<p>4. These provisions give effect to the Dimoldenberg decision (APE 241), that the prohibition on the disclosure of confidential information cannot be absolute, but must be subject to a public interest defence.</p> <p>The Code does not provide a definition of the public interest, but it is expected that the Standards Board for England will suggest that the test currently used under the Freedom of Information Act would be appropriate.</p> <p>Paragraph 4(a)(iii) provides a useful new relaxation to</p>

<p>disclose the information to any other person; or</p> <p>(iv) the disclosure is—</p> <p>(aa) reasonable and in the public interest; and</p> <p>(bb) made in good faith and in compliance with the reasonable requirements of the authority; or</p> <p>(b) prevent another person from gaining access to information to which that person is entitled by law.</p>	<p>enable a member to take legal and professional advice on a matter from a third party, such as his/her political party, provided that he/she ensures that the third party is subject to a similar duty of confidentiality.</p>
<p>5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.</p>	<p>5. This provision is not changed from the old Code. However, as drafted, this provision appears to mean that the offence arises from the fact that a reasonable person might regard the member's conduct as bringing his office or authority into disrepute, rather than that there is anything inherently deficient in that conduct. In a political world, different people may reasonably hold strong but opposing views on a matter, and a reasonable member of the public may take offence at conduct with which he/she disagrees politically.</p> <p>In the Livingstone case, the judge drew a distinction between conduct which reflects adversely upon the occupant of the office, as opposed to reflecting adversely upon the office or the authority.</p>

<p><b>6.</b> You—</p> <p>(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and</p> <p>(b) must, when using or authorising the use by others of the resources of your authority—</p> <p>(i) act in accordance with your authority's reasonable requirements;</p> <p>(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and</p> <p>(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.</p>	<p>6(a). Extends the old prohibition on misuse of position to cover “attempting” to use a member’s position improperly, and this ties in with the application of the Code to occasions where a member “purports” to be acting as a representative of the authority.</p> <p>6(b) This provision is on the misuse of the authority’s resources for political purposes is much clearer, but requires a definition of when such resources can legitimately be used for political purposes. It is to be hoped that the Standards Board for England can provide concise guidance on this point, enabling authorities to adopt clear rules.</p>
<p><b>7.</b> (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—</p> <p>(a) your authority's chief finance officer; or</p> <p>(b) your authority's monitoring officer,</p> <p>where that officer is acting pursuant to his or her statutory duties.</p> <p>(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional</p>	<p>No commentary.</p>

<p>requirements imposed by your authority.</p>	
<p style="text-align: center;">PART 2</p> <p style="text-align: center;">Interests</p> <p><b>Personal interests</b></p> <p>8. (1) You have a personal interest in any business of your authority where either—</p> <p>(a) it relates to or is likely to affect—</p> <p>(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;</p> <p>(ii) any body—</p> <p>(aa) exercising functions of a public nature;</p> <p>(bb) directed to charitable purposes; or</p> <p>(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),</p> <p>of which you are a member or in a position of general control or management;</p> <p>(iii) any employment or business carried on by</p>	<p>8. These provisions have been radically re-structured. The new format usefully brings together in one place the different types of personal interest which were previously set out in Paragraphs 8, 14 and 15 of the Code but in the process it makes some substantial changes, as set out below.</p> <p>8.1a The interests set out here are those which a member is required to register by virtue of Paragraph 13(1) below. The old Code of Conduct provided that a member had a personal interest where the matter under consideration at a meeting “related to” any of these interests. It was unclear whether this meant that the matter had to be directly about one of these interests, or merely to have an identifiable consequence for that interest. This phrase has now been replaced with “relates to or is likely to affect”. This would presumably cover reports which were merely for information, and where as a result there is unlikely to be a decision which might affect the person or body.</p> <p>The list of interests in Paragraph 8(1)(a) is virtually identical to the list which was previously in</p>

<p>you;</p> <ul style="list-style-type: none"> <li>(iv) any person or body who employs or has appointed you;</li> <li>(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;</li> <li>(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);</li> <li>(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);</li> <li>(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;</li> <li>(ix) any land in your authority's area in which you have a beneficial interest;</li> <li>(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of</li> </ul>	<p>Paragraphs 14 and 15 of the old Code. The changes are as follows:</p> <ul style="list-style-type: none"> <li>a. The specific reference to another “public authority” has been removed, but in practice such authorities would come within “a body exercising functions of a public nature.”</li> <li>b. In Paragraph 8(1)(a)(i), the definition is broader than before as it is no longer necessary to be appointed as a “representative” of the authority;</li> <li>c. In Paragraph 8(1)(a)(ii)(bb), the definition has been narrowed by the omission of “company, industrial and provident society (or) charity”, leaving just “body directed to charitable purposes”. In practice, a commercial company or partnership would still come under “employment or business”, and a voluntary body, such as a housing association, is likely to be “exercising functions of a public nature”, so this change is unlikely to have a great effect.</li> <li>d. In Paragraph 8(1)(a)(cc) the phrase “(including any political party or trade union)” is new. It merely clarifies the previous position.</li> <li>e. In Paragraph 8(1)(a)(iv), the definition is narrowed by the omission of “the name of any firm in which he is a partner, and the name of any company for which he is a paid director.” In practice, this makes little difference as it will remain an employment for a director and a business for a partner. However, this omission</li> </ul>
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<p>the description specified in paragraph (vi) is, the tenant;</p> <p>(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or</p> <p>(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—</p> <p>(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;</p> <p>(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or</p> <p>(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.</p> <p>(2) In sub-paragraph (1)(b), a relevant person is—</p> <p>(a) a member of your family or any person with whom you have a close association; or</p> <p>(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are</p>	<p>does call in question the nature of “appointment” and whether it relates only to employment-related appointments.</p> <p>f. In Paragraph 8(1)(a)(vi) the threshold for the nominal value of shares requiring disclosure at a meeting is raised from £5,000 to £25,000, thus requiring fewer disclosures at meetings. For registration, the threshold remains at £25,000.</p> <p>g. Paragraph 8(1)(a)(viii) in respect of gifts and hospitality is new. Previously there was merely a duty to notify such gifts and hospitality to the Monitoring Officer, rather than to disclose an interest where a matter under consideration affected a person or body who have provided the member with a relevant gift or hospitality. The main effect of bringing gifts and hospitality within interests is to provide statutory authority for the publication of the register of gifts and hospitality, which now becomes part of the register of members’ interests.</p> <p>37. Paragraph 8(1)(b) is substantially altered from the previous Paragraph 8, as follows:</p> <p>a. Previously, a member had a personal interest where the matter under consideration affected the well-being or financial position of the member, or of “<u>a relative or a friend</u>” This is now changed to “<u>a member of your family or any person with whom you have a close association</u>”. Whereas the old Code of Conduct contained a definition of “relative”, the revised Code of</p>
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<p>directors;</p> <p>(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or</p> <p>(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).</p>	<p>Conduct contains no definition of “family” or of what constitutes a “close association”.</p> <p>b. Previously, a member did not have a personal interest where a decision on the matter would not affect him/her to a greater extent than other council tax-payers, ratepayers or inhabitants of the whole authority’s area  In the revised Code, it is not even a personal interest where it would not affect the member to a grater extent than <u>the majority of the council tax payers, ratepayers or inhabitants of his/her ward or electoral division</u>. This means that, if the matter under consideration is one which affects the majority of the member’s ward or electoral division, the member does not have a personal interest, does not have to make any disclosure, and cannot have a prejudicial interest and be required to withdraw, even if the impact of the proposal would be very substantial, provided that at least half of the other local residents or businesses are equally affected.</p>
<p><b>Disclosure of personal interests</b></p> <p>9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.</p>	<p>9.1 Note that the requirement to disclose a personal interest (and subsequently to withdraw from a meeting if it is a prejudicial interest) only applies to “meetings” which are defined in Paragraph 1(4) as comprising only formal meetings of the authority, of the executive, or of any Committees and Sub-Committees, or joint or area committees or sub-committees.</p>

- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

- 9.2 If a member has a personal interest which falls within the category of "public service interest (i.e. broadly where the interest arises from some form of public service on the part of the member, so that any advantage would accrue to the other public body rather than to the individual member), then the member will not have to disclose that interest at the start of the meeting or of the consideration of the particular matter, but only if and when he/she speaks on the particular matter.
- 9.3 Where a member's interest arises from receipt of a gift or hospitality, no disclosure is required where the gift or hospitality was received at least 3 years previously.
- 9.4 Previously, the Standards Board for England has exercised a sensible discretion not to investigate allegations of failure to disclose a personal interest where the member clearly did not know of the personal interest, for example when he/she was employed by a large firm another arm of which had a contract with the authority. This custom has now been formally incorporated into the Code of Conduct by Paragraph 9(4), such that it will not even be a personal interest unless the member actually knew or ought to have been aware of the existence of the personal interest.
- 9.5. Paragraph 14 of the revised Code of Conduct introduces a new category of "sensitive information", which is information which, if available for public inspection, is likely to put the member or someone who lives with the member at serious risk of violence

	<p>or intimidation. Paragraph 9(5) applies this to disclosures at meetings, so that where a member, in disclosing “the existence and nature” of a personal interest, would have to disclose such sensitive information, the member may just disclose the existence but not the nature of that interest. Having said that, in electing to disclose just the existence of a personal interest and declining to disclose the nature of that interest, the member inevitably discloses that there is sensitive information connecting him/herself to the particular matter under consideration, even if he/she does not disclose exactly what that sensitive information is. Curiously, this dispensation is not carried forward by Paragraph 9(6) in respect of the recording of executive decisions.</p>
<p><b>Prejudicial interest generally</b></p> <p><b>10.</b>(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.</p> <p>(2) You do not have a prejudicial interest in any business of the authority where that business—</p> <p>(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;</p>	<p>10.1. The general test in Paragraph 10(1) as to what comprises a prejudicial interest remains unchanged. This has now been in use since adopted by the Ombudsman in 1974</p> <p>10.2 In the revised Code , the definition of a prejudicial interest is then radically restricted, because Paragraph 10(2) provides that, even if the interest satisfies the general test in Paragraph 10(1), it will still not amount to a prejudicial interest unless –</p> <p>a. <u>either</u> it affects the financial position of the person or body (as opposed to its well-being)</p>

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992

b. or it relates to the determining of any approval, consent, licence, permission or registration in relation to the person or body.

This means that, unless the matter comes within this defined list of approvals, consents etc., a matter cannot give rise to a prejudicial interest however much it affects the general well-being of the person or body, and however likely it is to affect the way that the member may speak or vote on the matter, unless it actually affects the financial position of that person or body.

This is a very substantial limitation on the definition of a prejudicial interest, which was canvassed in the consultation on the draft revised Code of Conduct only in respect of “public service interests”, but is now implemented in respect of all personal interests, and which effectively takes us back to the concept of pecuniary and non-pecuniary interests as it was before the Local Government Act 2000.

The Code provides that such interests cannot be prejudicial interests. However, such a relaxation of the Code of Conduct does not alter the common law rules which would render a decision of the authority open to judicial review if any of the members taking that decision did so for ulterior purpose (such as private advantage), unreasonably or irrationally, or there was apparent bias (in the sense that, whether or not there was a breach of the Code of Conduct, the decision-making process just appeared to be unfair as the result of the participation of one or more members

	<p>with a personal interest in the outcome) or predetermination.</p> <p>The revised Code of Conduct contains no definition of “determining” any such approval etc. This leaves open to doubt whether it would also include variation, attaching, removing or amending conditions to, waiving or revoking any such application etc.</p> <p>10(2)(c)(iv) is drafted specifically and does not include the provision of insurance or any other benefit to members which does not come within the words “allowance, payment or indemnity”.</p>
<p><b>Prejudicial interests arising in relation to overview and scrutiny committees</b></p> <p><b>11.</b> You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—</p> <p>(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and</p> <p>(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.</p>	<p>11. The purpose of this provision is to ensure, as far as possible, that members do not scrutinise their own decisions. This provision has been amended from the old Code to provide that a member will now only have a prejudicial interest if he/she was actually present when the original decision was made, and to extend it to exclude a member of the Scrutiny Committee who was a member of the Executive when the Executive took a decision which is now being scrutinised.</p> <p>There is an exception which allows an executive member to appear and answer questions or to give evidence at the Scrutiny Committee, at Paragraph 12(2) of the revised Code of Conduct. However, as this is subject to such rights of audience being granted on equal terms to members of the public, it does not</p>

	<p>cover the instance of a member of the Executive who is specifically invited to give evidence or answer questions.</p>
<p><b>Effect of prejudicial interests on participation</b></p> <p><b>12. (1)</b> Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—</p> <p>(a) you must withdraw from the room or chamber where a meeting considering the business is being held—</p> <p>(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;</p> <p>(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;</p> <p>unless you have obtained a dispensation from your authority's standards committee;</p> <p>(b) you must not exercise executive functions in relation to that business; and</p> <p>(c) you must not seek improperly to influence a decision about that business.</p> <p>(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the</p>	<p>12 Note that the requirement to disclose a personal interest (and then to withdraw from a meeting if it is a prejudicial interest) only applies to “meetings” which are defined in Paragraph 1(4) as comprising only formal meetings of the authority.</p> <p>12.2 Seeks to overcome the consequences of the judgment in Richardson v North Yorkshire County Council, which meant that a member with a prejudicial interest was required to withdraw from the meeting for the entirety of consideration of that matter and could not present his/her own or an constituent’s case.</p> <p>Under the revised Code, a distinction is made between making representations to the meeting and being involved in the discussion and decision-making. Now, a member with a prejudicial interest is to be treated very much as any other member of the public, so that where the law or the authority’s rules grant members of the public a right of audience, the member may appear as a member of the public to present a case and answer questions but must then withdraw from any consideration and determination of the matter. This means that the member still does not have quite the same rights as a member of the public, as he/she can only attend in order to make representations and answer questions, rather than just to observe the course of the meeting, and must</p>

<p>business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.</p>	<p>withdraw as soon as he/she has made such representations or answered such questions, so cannot remain to observe the rest of the item.</p> <p>In practical terms, it may be useful if, when a member does intend to attend to make such representations, he/she notifies the relevant officer of such intention before the start of the meeting, thus avoiding unnecessary challenges to his/her right to attend, and if, once the member has completed his/her representations, the Chairman confirm that the meeting will not be asking any questions of the member, so that it is clear that he/she now has to withdraw.</p>
<p style="text-align: center;">PART 3</p> <p style="text-align: center;">Registration of Members' Interests</p> <p><b>Registration of members' interests</b></p> <p><b>13. (1)</b> Subject to paragraph 14, you must, within 28 days of—</p> <p style="padding-left: 40px;">(a) this Code being adopted by or applied to your authority; or</p> <p style="padding-left: 40px;">(b) your election or appointment to office (where that is later),</p> <p>register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by</p>	<p>13. It will be necessary for every member to re-register their interests within 28 days of their authority adopting the new Code of Conduct. A member who fails to do so will be in breach of the revised Code of Conduct.</p> <p>The actual categories of interests which require to be registered are very similar to those which were required under the old Code. The only addition is that the register of gifts and hospitality is merged into the</p>



providing written notification to your authority's monitoring officer.

- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

register of interests, thereby overcoming the absence of a statutory basis for the publication of the register of gifts and hospitality by applying section 81(6) of the Local Government Act 2000 to the combined register.

The requirement to provide sufficient detail of any property interests to identify the property, which appeared in the old Code of Conduct, has been lost in the transition to the revised Code of Conduct.

The drafting of the revised Code leaves an ambiguity as to whether a member must register an interest simply by virtue of (for example) membership of a relevant body, or has to register that interest only once there is a relevant item of business before the authority. In the old Code, the duty to register an interest arose simply because of, for example, membership of a particular body. In the new Code, the duty to register arises where there is a personal interest, and Paragraph 8(1) provides that a member has "a personal interest in any business of your authority where it relates to or is likely to affect (such a body). It is therefore unclear whether a personal interest can exist in the absence of an item of business before the authority. However, a purposive interpretation would require members to register such memberships of bodies and so on as personal interests irrespective of whether there was a current item of business, the safest course would be register it .

### **Sensitive information**

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

14. This introduces a new category of "sensitive information", which is information which, if available for public inspection, is likely to put the member or someone who lives with the member at serious risk of violence or intimidation. It is for the member to advise the Monitoring Officer of the information which he/she considers to be sensitive, and then only if the Monitoring Officer agrees that it is sensitive, the member can omit the sensitive information from his/her formal notification to the Monitoring Officer.

Paragraph 9(5) applies this to disclosures at meetings, so that where a member, in disclosing "the existence and nature" of a personal interest, would have to disclose such sensitive information, the member may just disclose the existence but not the nature of that interest. Having said that, in electing to disclose just the existence of a personal interest and declining to disclose the nature of that interest, the member inevitably discloses that there is sensitive information connecting him/herself to the particular matter under consideration, even if he/she does not disclose exactly what that sensitive information is. Curiously, this dispensation is not carried forward by Paragraph 9(6) in respect of the recording of executive decisions.

## Standards of Conduct for Members

### The General Principles

**Selflessness** — members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

**Honesty and integrity** — members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

**Objectivity** — members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** — members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

**Openness** — members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

**Personal judgement** — members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

**Respect for others** — members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

**Duty to uphold the law** — members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them

**Stewardship** — members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

**Leadership** — members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.