

Draft Members' Code of Conduct

Schedule of Comments

Draft Code Text	Comment
Para 2	This section mainly concerns the fact that the draft code is intended as a single code for all types of authority and, as such, some elements are applied selectively under this section.
Para 4	<p>This para revokes the previous codes and addresses what happens during the transitional period between the old and new codes.</p> <p>( Drafting point – 4(2)(a) appears to result in the possibility of the new code applying to conduct occurring at a time when the previous code was in force. This would seem unfair.)</p>
Schedule	The Schedule contains the text of the model code itself which, subject to alterations to reflect the type of authority, will be that adopted by the authority.
<p>Part 1, General Provisions</p> <p>Interpretation</p>	<p>This part contains some definitions of terms used within the code some of which are identical to those in the existing code. Some commentators have suggested that it would be of assistance if there were more definitions included in this section, e.g</p> <ul style="list-style-type: none"> <li>▪ “Close personal association” para 7(c)(i) – N.B. does this include an enemy?</li> <li>▪ “Family” – 9(c)(i) – N.B this is defined in the current code.</li> <li>▪ “Lobbying Organisation” - 9(4)(b)</li> <li>▪ “Of a financial nature” - 11(2)</li> <li>▪ “Philanthropic organisation” – 9(3)(b)</li> <li>▪</li> </ul> <p>‘Meeting’ The definition of ‘meeting’ is restricted to committee meetings of the authority itself. This is the position with the existing code and some have argued that this should be widened to include meetings between members and officers and other meetings such as meetings of partnerships, such as the Local Strategic Partnership, where members attend in their role as councillors. The key point here is that the provisions relating to interests are applied to ‘meetings’ in the narrow sense and not to the broader range of meetings which, some would argue, be as important as ‘committee’ meetings.</p> <p>Widening the definition in this way would lead to a significant impact on the number of instances where the provisions relating to interests would apply.</p>

Para 1 - Scope	<p>This section concerns the circumstances in which members are required to adhere to the provisions of the code.</p> <p>1(1)(a) – It has been suggested that this should include circumstances in which a member ‘purports’ to conduct the business of the authority as well as when they, in fact, do so.</p> <p>1(1)(c) – Query whether there should be a definition of ‘representative’.</p>
Para 2 Respect/bullying	<p>This para contains provisions in respect of bullying, treating others with respect and intimidation of witnesses.</p> <p>2(2)(b) – Bullying needs definition, for instance could it arise from a single act or does it require a course of action.</p> <p>It has suggested that the code should include an unequivocal prohibition on member’s providing references for officers in connection with posts within their own authorities.</p>
Para 3 Confidentiality	
Para 4 Disrepute	
Para 5 Improper advantage and misuse or resources.	
Para 6 Have regard to advice when making decisions.	<p>This provision requires that members must, when making decisions, have regard to the advice of the MO and CFO and give reasons.</p> <p>This is to be welcomed but it is suggested that the list of officers whose advice should be heeded should not be restricted to the two Statutory officers. I suggest it be extended to all officers of the relevant authority.</p> <p>Para 8 of the code operative in Wales provides a preferable version of this provision and it is suggested that the Welsh para 8 be utilised instead of the revised English version.</p>
Part 2 Interests	<p>This part relates to interests and it is the area which has seen the most radical changes in revised code.</p>
Para 7 Personal Interests	<p>In the existing code matters constituting Personal Interests are contained in paras 14 &amp; 15 and it is helpful to find them consolidated in one place.</p>

	<p>However, some significant changes have occurred in the process of consolidation and there appears to be little explanation of these changes. I find the drafting confusing around the issue of what constitutes a personal interest.</p> <p>The term 'relates to' is used in both para 7(a) and it is suggested that this term is likely to cause confusion due to difficulty of interpretation. For example, where a parish member is also a district member sitting on the planning committee do they have a personal interest in an application which has previously been considered by their parish.</p> <p><i>(The term 'relate to' should be replaced with something having a clearer meaning.)</i></p>
Para 7(a)(ii)	<p>The existing code includes, as registrable interests, firms in which the member is a partner and companies in which a member is a director. The revised code omits these without explanation.</p> <p><i>(The term 'appointed' lacks clarity and should be clarified or replaced with something more meaningful.)</i></p> <p><i>(The wording from 14(b) of the existing code should be retained)</i></p>
Para 7(a)(vi)	<p>The new code categorises gifts and hospitality over £25 as personal interests whereas they are dealt with separately in the existing code.</p> <p><i>(Gifts and hospitality should be dealt with separately as under the existing code).</i></p>
Para 7(b)	<p><i>(Requires re-drafting to reflect the fact that the interest lies in the body of which the member is a member and not in their membership itself.)</i></p>
Para 7(c)(i)	<p>The existing code uses the terms 'relative' and 'friend' and provides a definition of 'relative'. The omission and replacement of these will detract from the clarity of this part. In addition the new code omits to deal with the position of 'enemies', this may be included within the ambit of 'close personal associates' but this isn't clear.</p> <p><i>(Retain the concepts of 'relative and friend'. Provide definition of close personal associate including enemy. )</i></p>
Para 7(c)	<p>The existing provision, which renders interests shared with a majority of the ward, but not authority area, 'personal', has been narrowed so that now it is required that the interest affects the member to a greater extent than the majority of other inhabitants of their ward or electoral division as opposed to the majority of inhabitants of the council area. In effect this significantly reduces the amount of instances where a member would be required to declare a 'personal' interest.</p> <p><i>(The existing scope of the rule should be retained)</i></p>
Para 8(1)	<p>Para 8(1) applies the requirement to disclose personal interests when a member attends a meeting of the authority at which the relevant matter</p>

	<p>is considered. Para 8(6) requires disclosure where a member takes an executive decision. Para 8(1) may leave a lacuna in that Ward members are due to receive new powers to take action, including allocating funding, within their wards. As the likelihood of personal interests in this context is high the requirement to declare interests when taking such decisions should be specifically included.</p> <p><i>(Amend code to apply declaration requirement to individual ward councillor decisions /action.)</i></p>
Para 8(2)	<p>Para 8(2) relates to 'public service interests', which are defined in para 8(7), applies a modified disclosure requirement which only becomes operative if and when the member addresses the meeting on the matter. This means that if a member doesn't address the meeting there is no obligation to disclose the interest, notwithstanding the fact that they may vote. I envisage that this rule will be confusing to apply in practice and I see no tangible benefit arising from it. I understand that it is designed to reduce the amount of declarations of interests but, in my experience, this isn't problematic or the source of complaint.</p> <p><i>(Remove the concept of public service interest altogether)</i></p>
Para 8(3)	<p>Para 8(3) – This provision introduces a new requirement to disclose gifts and hospitality, valued at more than £25 and received within the past five years, as if they were personal interests. This is potentially a very onerous burden given the low value threshold and the long time period.</p> <p><i>(Gifts and Hosp should be dealt with separately as under the existing code but if they are to be included the value should be increased to £100 and the time period reduced to 2 years)</i></p>
Para 9 (prejudicial Interests)	<p>The test of a prejudicial interest is unchanged.</p>
Para 9(2)(a)(i)&(ii)	<p>This provision holds that, subject to two exceptions, a member doesn't have a prejudicial interest in a matter if they have a 'public service interest' in the matter. 'Public service interest' is defined for this purpose at para 9(4). The definition here is different to that used earlier in the code at 8(7)(a) in that it extends the definition to include matters relating to 'charities, and lobbying and philanthropic bodies'. However, these aren't defined, and utilising the same concept, (public service interest), with different meanings, is likely to be confusing.</p> <p>The two exceptions mentioned are, where the matter relates to the financial affairs of the body to which the public service interest relates or, it relates to any approval, consent or licence. The first exception is likely to prove difficult to apply as almost anything could 'relate to' the financial affairs of a body.</p>

	<i>(Retain one definition of 'Public Service Interest' and exclude 'Charitable Lobbying or philanthropic bodies' from this as they are difficult to define and will potentially cover interests which should, by their nature, be diclosable.)</i>
<p>Para 9(3) Member doe not have prej int when attending as member of the public.</p> <p>Re; Richardson Case</p>	<p>This provision attempts to redress the impact of the decision in the Richardson case which, in effect, held that, in certain circumstances, Councillors may be precluded from attending a meeting when other members of the public were permitted. In that case the meeting was a planning committee and the matter was the grant of permission for an open cast mine close to the councillor's home.</p> <p>In my view the weakening of the prohibition on members attending meetings at which matters in which they have a prejudicial interest are discussed, is ill advised and ignores a key assumption of the present code; that councillors are potentially in a special position of influence vis a vis their fellow councillors. If such a provision is necessary, and I question that it is, the Standards committee should control its use in a similar way to that of dispensation.</p> <p><i>(Remove 9(3) altogether, or require that, in addition the meeting itself agreeing, the stds committee must grant its consent.)</i></p>
Para 11(2)	<i>(Definition of 'interest of a financial nature' required.)</i>
Para 11(2) (a)	<p>This sub para perpetuates an anomaly from the existing code where it is unclear as to what things an O&amp;S committee can do which are 'not exercising functions of the authority or its executive'.</p> <p><i>(Remove 11(2)(a))</i></p>
Para 11(3)	<i>(This para is otiose and should be removed.)</i>