

# Review of the Code of Conduct for Members of Parliament – Consultation Paper

## Standards for England's response

### Introduction

1. Standards for England welcomes the Parliamentary Commissioner for Standards' review of the current Code of Conduct for Members of Parliament and thanks the Commissioner for his invitation to respond.
2. Standards for England is the strategic regulator currently charged with maintaining and overseeing the conduct framework for local politicians – elected and co-opted members of local authorities, including those at town and parish councils. The framework was first established under the Local Government Act 2000 and includes a Model Code of Conduct on which local authorities base their own, local Codes. The local Codes rarely deviate from the Model Code so it could effectively be viewed as a national Code.
3. Although the nature of the role of a local, as opposed to a national, politician is different, in all public roles it is important that the public have confidence in the honesty and integrity of the individual they have elected and that they are empowered to take action where they feel this is not the case. The Codes of Conduct setting out acceptable behaviour at each level may differ in their detail, but it is likely that the underlying aims and principles will be similar.

### Background

4. The importance of high standards for all in public life is of particular concern since there is an expectation from the public that those in public life adhere to a high set of standards of behaviour<sup>1</sup>. The public desire an honest and reflective approach to politics, and hold the view that political leaders have a special responsibility when it comes to good conduct<sup>2</sup>. Research also shows that the integrity of politicians is valued by the public.<sup>3</sup>

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<sup>1</sup> BMG Research (2009) How Proportionate is the Standards Framework?

<sup>2</sup> Committee on Standards in Public Life (2004) Survey of Public Attitudes towards Conduct in Public Life

<sup>3</sup> Allen N and Birch S (2009) Working paper on Political Conduct and Misconduct: Probing Public Opinion, Essex University

5. When the Committee on Standards in Public Life produced its first report<sup>4</sup> which looked at the conduct of MPs, it concluded that the vast majority upheld high standards but that conduct was more rigorously scrutinised than in the past by members of the public and that it was therefore important to have the right procedures in place to ensure those high standards were maintained. The Committee considered local government members in its third report<sup>5</sup> and came to similar conclusions. In both instances, it recommended that a Code of Conduct be drawn up to outline the standards expected.
6. The Committee also proposed Seven Principles of Public Life that should extend to all working in a public capacity. Whilst the Codes for MPs and councillors have developed independently of each other, the Principles have been a common driver as to what they should contain and how they should be applied.
7. The local government framework came into force in 2001 with Standards for England originally dealing with all complaints centrally until local assessment came in in 2008 at which point our role became that of strategic regulator. Over the last ten years we have gained our own valuable experience of how well the conduct framework has been functioning, not only through first-hand experience of dealing with complaints, but also through carrying out extensive research.
8. Our stakeholder tracker research, carried out with members and officers of all types of authority, has shown a positive trend in satisfaction levels in terms of attitudes to the ethical environment as well as an improvement in the perception of members' standards of behaviour.<sup>6</sup>
9. Additionally, a qualitative study that reported in 2008 found that many of our stakeholders felt there had been a marked reduction in examples of serious and flagrant misbehaviour, as well as in less serious misconduct such as the use of disrespectful language during meetings and instances of bullying. Most gave the reason for this perceived improvement to be the existence of the Code of Conduct and high levels of awareness of the rules of behaviour.<sup>7</sup>

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<sup>4</sup> First Report of the Committee on Standards in Public Life (1995) MPs, Ministers and Civil Servants, Executive Quangos

<sup>5</sup> Committee on Standards in Public Life (1997) Standards of Conduct in Local Government, Third Report of the Committee on Standards in Public Life

<sup>6</sup> BMG Research (2004, 2007, 2009) Stakeholder Tracker: Satisfaction with the Standards Board for England and Attitudes to the Ethical Environment

<sup>7</sup> BMG Research (2008) Satisfaction with the Standards Board for England and Attitudes to the Ethical Environment

10. Standards for England is, therefore, responding to this consultation by drawing on its experience of setting up and maintaining a conduct framework for local politicians, based on the statutory Model Code of Conduct, that applies solely to that group of elected officials. Our responses do not suppose to imply that we have experience of what would work best for Members of Parliament but simply outline our own knowledge of what has worked well or otherwise in the local context. In consequence, we will not respond to all the questions but will concentrate on those where we have some specific experience to share.

## Structure of the Code

*Question 1: Should the Code of Conduct continue to set out only the high-level principles for Members' conduct, or should it provide a detailed rules-based Code?*

11. In the consultation document, you make the distinction between the length of the Code of Conduct for Members of Parliament which is very short and therefore high-level, and the Code for the Scottish Parliament which runs to about 100 pages and is much more detailed in its provisions.
12. The local government Model Code is a statutory one and covers six pages – most authority Codes based on this Model Code are of a similar length. This suggests that local government Codes are more in line with the Code for MPs in the United Kingdom than the model adopted by the Scottish Parliament.
13. Research carried out for Standards for England by the University of Manchester<sup>8</sup> found that there were four key components of an ethical environment. One of those components is the need for a balance between rules and values. The research showed that a system based on too many rules can be counterproductive as this creates a passive attitude to ethics based on 'adherence to rules'. A large number of detailed rules are not necessarily an indicator that an accountability framework is being taken seriously in an organisation and they may undermine the publicly spirited motivation of the individuals being regulated.
14. In addition, the research found that, while rules are important, paradoxically there is a danger that having a set of rules which is too tightly defined can lead to a complexity which makes understanding of the rules too difficult to grasp which is therefore counter-productive.
15. The Committee on Standards in Public Life also seems to prefer a principles rather than rules-based approach to managing standards. In its report into the MPs' expenses revelations, the Committee reported that, "*The new*

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<sup>8</sup> Greasley et al (2006) The Components of an Ethical Environment

*system for regulating the reimbursement of MPs' expenses must be based upon clearly articulated principles..... Rules cannot cover every eventuality and firm principles are required to guide their interpretation.*<sup>9</sup>

16. Standards for England has striven to simplify the local Code of Conduct over time and to ensure that it concentrates on the core underlying principles. The most recent Model Code became statute in 2007 and research carried out for Standards for England in 2008 showed high levels of satisfaction with it, with respondents finding it clearer and better defined than the previous Code.<sup>10</sup> Our own experience is therefore that a principles-based Code works more effectively than one which is detailed and rules-based.

## **II. Scope of the Code**

*Question 3: Should the Code apply to all aspects of a Member's public life, or only those aspects related in some specific way to their position as a Member of Parliament?*

*Question 4: Should the scope of the Code extend to some aspects of a Member's private and personal life? If so, how should that be expressed in the Code?*

17. The Code of Conduct for councillors applies whenever a councillor conducts the business of their authority, including the business of the office to which they have been elected or appointed, or whenever the councillor acts, claims to act or gives the impression they are acting as a representative of their authority. The above is defined as acting in an official capacity.
18. Councillors' behaviour is also covered when they are representing their authority on another relevant authority<sup>11</sup> (by that other authority's Code) or on any other body (by their own authority's Code).
19. Some of the scenarios you pose in this section within the consultation include Members who were duped into meeting an undercover reporter to discuss employment opportunities once they have left the House or Members who continue to participate in the profession they had before becoming a Member.
20. Standards for England's experience would be that the former may be captured by the local government Code but that the latter is unlikely to be. The important distinction within the Code is when a member 'acts, claims to act or gives the impression they are acting as a representative of their

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<sup>9</sup> Twelfth report of the Committee on Standards in Public Life (2009) MPs' expenses and allowances

<sup>10</sup> BMG Research (2008) Satisfaction with the Standards Board for England and Attitudes to the Ethical Environment

<sup>11</sup> Definition of relevant authority - Local Government Act 2000, Part III, Chapter I, Section 49(6)

authority.’ Therefore the exact circumstances of the situation would matter as to whether or not the alleged misconduct would be captured by the Code but it would not necessarily be limited to when the councillor was very obviously working on councillor business, for example in meetings within the council chamber.

21. Conduct that happens in a councillor’s personal life is not caught within the Code and could not therefore constitute a breach. This is generally very straightforward but there are occasions when the distinction is unclear. For example, there can be confusion when an individual writes an online blog or when they are campaigning for re-election. Case law in the local government field has led to interpretation of when a councillor is acting in their public capacity to be construed relatively narrowly.
22. The Model Code of Conduct was revised in 2007. It had been intended to widen the scope of the Code to cover some criminal behaviour which led to a conviction, therefore covering some elements of a councillor’s private life. However, the provisions in the Local Government and Public Involvement in Health Act 2007 which would have enabled this to happen have not been brought into force.
23. An important consideration when deciding whether or not to cover a Member’s private or personal life is their right to a private life under the Human Rights Act 1998. Although there is an argument that, in the eyes of the public, an MP is always an MP, whether they are sitting in the House or ‘off-duty’ they remain entitled, as the rest of the population, to a private life and it would therefore be difficult to see how the Code could be extended to their private life without impinging on that right. Any interference with that right would need to have a clear legal basis, have a clear legitimate aim such as the prevention of crime or the protection of health or morals and be proportionate in its application to achieve that aim.

#### **IV. General Principles of Conduct**

*Question 8: Should the general principles of conduct established by Lord Nolan continue to be included in the Code?*

*Question 9: Should there be any additions to the general principles and, if so, what?*

*Question 10: Should paragraph 15 of the Code be repositioned as a general principle?*

*Question 11: Should the general principles continue not by themselves to found a complaint against a Member?*

24. The general principles of conduct established by Lord Nolan are not included in the Model Code for local government councillors, although it does state that members should read the Code together with the general principles prescribed by the Secretary of State. Standards for England includes ten general principles of public life at the beginning of its guidance on the Code to remind members of their general duties and to emphasise the underlying ethos behind the Code provisions. These ten principles include the ones originally set out by Lord Nolan, as well as personal judgement, respect for others, a duty to uphold the law and stewardship.
25. In the local government system, an individual cannot complain only that a councillor has breached one of the general principles of conduct. Their complaint would have to relate to one of the specific provisions of the Code which, by its nature, would show that the councillor had not been acting within the spirit of the principles.
26. The wording in the General Principles section of the MP's Code seems to reflect the situation in local government. Namely, that a complaint would be made about a breach of one of the rules of conduct rather than about a breach of one of the principles itself. In our experience this works well as, whilst the principles should guide councillors in the type of behaviour expected of them, they alone would be hard to judge complaints against. Whilst we fully advocate a Code which is flexible and not rules-driven, assessing complaints against the general principles themselves could be a subjective process. As we have stated earlier in this response, an effective conduct framework requires a balance between rules and values. The principles outline the values expected but are too general to form the basis for an effective and fair complaints system.
27. You have also posed the question in this section as to whether paragraph 15 of the Code should be repositioned as a general principle. There are two elements to this paragraph. The first part states that "*Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament*". This could be included in the general principles, either as additional explanation under the 'Integrity' or 'Leadership' headings or perhaps as an additional principle. Alternatively, it could be viewed as an overarching purpose of the Code of Conduct as it seems that all the principles and rules set out in the Code hope to achieve the public's trust in the integrity of Parliament. It could readily be incorporated into paragraph b) under 'The Purpose of the Code'.
28. The second part of paragraph 15 says "*...and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute*". This part could remain in the 'Rules of Conduct' section as it is now. It reflects a provision of the local government Code which states: "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*".

## V. Rules of Conduct

### Conflicts of Interest (paragraph 9)

*Question 12: Should paragraph 9 remain as drafted and remain subject to adjudication?*

29. We have no specific comment to make on the drafting of paragraph 9. However, we would advocate its continued inclusion in the Code, as well as its continuing to be adjudicable. The notion of working in the public interest and not putting private interests first is a cornerstone of a democratically accountable government. Therefore, Standards for England considers it to be an important principle of public life that should remain in the Code and that it should be enforceable through the complaints mechanism.

### Financial Rules (paragraphs 10-12)

*Question 15: Should paragraph 12 remain in the Code? If so, should it be aspirational or adjudicable? Does it require amendment?*

30. Standards for England believes that there are some important elements to this paragraph that it would be advisable to retain. We do not have any particular preference as to whether those elements should be retained in this paragraph, in paragraph 16 or in the Guide to the Rules as you query in the consultation document.
31. Paragraph 12 refers to financial interests in any activities, *“including activities which may not be a matter of public record such as informal meetings and functions....”* It is this element that we consider it important to retain as our experience suggests that it is sometimes in just such informal situations, but whilst still conducting the business of the authority, that potential breaches of the local Code of Conduct can occur.
32. It is also these situations that a member of the public may be much less likely to know about and where it is therefore perhaps more important that a Member of Parliament should act within the spirit of the Code and conduct themselves in a transparent and accountable manner.

### Information Received in Confidence (paragraph 13)

*Question 16: Should paragraph 13 remain as drafted?*

*Question 17: Should paragraph 13 be extended to prevent Members from disclosing confidential information which they receive; and, if so, should there be a public interest test for any such disclosure?*

33. There are two equivalent provisions in the local government Code of Conduct. Firstly, there is a provision that deals explicitly with disclosure of confidential information (rather than use of confidential information for private purposes). There is also a section stating that councillors must not use, or attempt to use, their position improperly to the advantage or disadvantage of themselves or someone else.
34. The provision relating to non-disclosure of confidential information does not simply state that councillors must not disclose, rather it sets out some exceptions to non-disclosure, namely that it may be acceptable if: they have the consent of an authorised person; they are required to disclose it by law; they disclose it for the purpose of obtaining professional advice; or, it is reasonable and in the public interest to disclose and that disclosure is made in good faith and in compliance with the requirements of their authority.
35. The aims of this provision and the one relating to misuse of position are similar to the one in paragraph 13 of the MP's Code, although they go beyond solely dealing with use of confidential information for financial gain. The non-disclosure provision aims to prevent a councillor disclosing confidential information in any way other than in the public interest. The misuse of position provision aims to prevent a councillor from using their position in any way to the benefit or detriment of themselves or another person.
36. The Commissioner may wish to consider broadening the scope of this provision to show that an MP should only use confidential information for purposes other than parliamentary duties when the MP is certain that it is in the public interest or that another condition applies, such as having the consent of an authorised person.
37. In question 17 you ask about the application of a public interest test. We do feel that including the public interest in this provision would be beneficial. In our guidance on the Code, we outline the four elements that must be met in order to satisfy the public interest test, including that the disclosure is reasonable and made in good faith. This ensures that any complaint about disclosure of confidential information will look at the circumstances in which that disclosure was made and the motivation and beliefs of the councillor when making the disclosure. It is not the case that, by the simple act of disclosing confidential information, a councillor has breached the Code of Conduct.

## Bringing the House into Disrepute (paragraph 15)

*Question 19: Should there continue to be a distinction between Members' behaviour which reflects adversely on themselves and behaviour which reflects on all Members and the institution of the House? Should only the latter be subject to the Code and, if so, should the reference be aspirational or adjudicable?*

*Question 20: If this provision is to extend to aspects of a Member's private life (see question 4 above), should it be aspirational or adjudicable (in other words, should it be possible to complain to the Commissioner about a Member's conduct of their private life)?*

38. In this section you question whether the scope of the paragraph needs refining as it is not clear whether any unacceptable behaviour is intended to come within the provision, including lying to an official, a constituent or a member of the public; bullying and intimidating behaviour and offensive language or comments.
39. The local government Code of Conduct deals with behaviour that could bring a councillor's office or authority into disrepute. However, it is often difficult to distinguish in cases, and in the eyes of the public, between behaviour that reflects badly solely on an individual, or that reflects badly on the office of councillor or the council as a whole. It may be easier to make the distinction between behaviour that reflects badly on only the individual/office and behaviour that reflects badly on the authority.
40. Standards for England's experience is that it is useful to include within the Code provisions that would capture behaviour such as intimidation and bullying and the use of offensive language.
41. Standards for England has outlined, in its response to question 4 above, its views on extending the Code of Conduct to cover the private life of local councillors. Those considerations aside, were the Commissioner to decide to extend the disrepute provision to cover aspects of a Member of Parliament's private life, it may be confusing to then make those provisions aspirational, rather than adjudicable. Conversely, making that distinction may mean that the provisions are more likely to be human rights compatible.

## VI. Registration and Declaration of Interests

*Question 21: Should the requirement to declare an interest in paragraph 16 be extended to public officials (as provided in paragraph 12 and the Guide to the Rules)?*

42. The relevant provision in the local government Code refers to the disclosure of interests where the member “attends a meeting of your authority at which the business is considered”. A meeting means any meeting of the authority, the executive of the authority or any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or area committees.
43. There is no mention in the local government Code of the need to declare interests in any communications with particular types of people. However there is a requirement not to seek to improperly influence a decision in which you have a financial or other substantial interest which may or may not have been registered. That provision appears to be aimed at broadly the same sort of mis-behaviour as is addressed in your question.
44. Whilst it could be argued that the definition of ‘communication’, in addition to ‘any proceeding of the House or its Committees’, extends beyond the definition of ‘meeting’ in the local government context, and that MPs are therefore required to declare interests in a wider range of situations than councillors, the restriction on declaration depending on who those communications are with seems to be a false one since it is aimed at the person to whom the communication is made rather than the purpose of the communication.
45. The local government Code deals with “where you have a personal interest in any business of your authority”, and we would suggest that it is the existence of the interest, rather than the type of person or organisation that an MP is communicating with, that should be used as the rule for deciding on whether or not that interest needs to be declared. Therefore, if communication is to continue to be included in this paragraph, in addition to declaring interests during any proceeding of the House or its Committees, we would be of the opinion that you should extend the requirement to declare interests when dealing with public officials, or consider adding a requirement not to seek to improperly influence decisions in which the member has a substantial interest.

## **VII. Duties in respect of the Parliamentary Commissioner and the Committee on Standards and Privileges**

*Question 23: Should all Members be asked to sign their commitment to the Code when they first take their seats in each Parliament?*

46. Section 52 of the Local Government Act 2000 places a duty on elected and co-opted councillors to provide a written undertaking to their local authority

that they will observe that authority's Code of Conduct when performing the functions of the authority. The Code which they have undertaken to observe must also be made available for inspection by the public. If a member fails to make the required undertaking, they will cease to be a member.

47. This approach, like the approach in the House of Lords, means members take a positive step in acknowledging the Code and its application to their work.
48. In its third report, the Committee on Standards in Public Life recommended that *"Every new councillor, and every councillor on re-election, should be required to state that they had read, understood and would observe their local code"*. (Recommendation 5) In the report, the Committee also stated that: *"We believe that the present statement by a councillor on taking office, that he or she will be guided by the National Code, is inadequate."*
49. Whilst the local government Code differs from the MP's Code, in that it is a statutory one, placing a requirement on MPs to sign their commitment to the Code could help to establish the culture of embedding and maintaining standards within the House which the Committee on Standards in Public Life recommended in its 12<sup>th</sup> report into MPs expenses: *"...it is vital that the House buys into the standards of conduct and behaviour it considers acceptable in relation to financial and other standards issues. Such behaviour is a key part of the culture of the House, and cannot effectively just be imposed from outside."* (Paragraph 13.22)

## Conclusion

50. In conclusion, Standards for England considers the Code of Conduct for Members of Parliament to be an important document that should provide an effective guide to MPs as to the behaviour expected of them. There is also an argument that the Code of Conduct for MP's should aspire to be the standard by which all in public office expect to be judged. Standards for England has anecdotal evidence to suggest that this is what those elected to local government office believe.
51. A balanced Code, which is driven by strong principles of behaviour and is not too rules-driven or prescriptive, can help to foster a strong culture of ethical behaviour and help our elected representatives to meet the high standards of behaviour that are expected of them by the general public.
52. A Code that is drafted in a clear and easily understandable manner and which supports the notions of working in the public interest and transparency of activities, not only helps the general public to consider whether or not an MP has acted in breach of the Code, but also helps the MP to defend their behaviour.

53. Standards for England therefore supports any changes to the Code which would help to clarify the type of behaviour expected of MPs and which make it easier for them to show that they are working in an honest and open manner with the interests of the public as their driving concern.

## **STANDARDS FOR ENGLAND**

**13 May 2011**