

# Code of conduct for local authority members and employees

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Response to Communities and Local Government consultation prepared on behalf of  
the Local Government Association (LGA) and Local Government Employers (LGE)

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## submission

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## **Executive summary**

The Local Government Association (LGA) and Local Government Employers (LGE) welcome the opportunity to comment on the proposals from Communities and Local Government (CLG) regarding codes of conduct for members and local authority employees.

This consultation document proposes revising the model code of conduct for local authority members, principally to clarify its application to members' conduct in their non-official capacity. The paper also invites views on proposals for associated changes to the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, into the terms and conditions of their employees.

We have sought the views of member authorities on this matter. In broad terms the LGA and LGE support the proposals regarding members and recognise that previous responses on this issue have been acknowledged and incorporated into the current proposal.

We have greater concerns around the proposals for an employee code of conduct and have provided a more detailed analysis of our concerns.

## **Model code of conduct for local authority members**

### **1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?**

The LGA's view, which we have put forward in previous consultations on this matter, is that the code should only apply in this instance when the member's conduct would constitute a criminal offence.

### **2 CLG proposes that criminal offence be defined as any criminal offence for which the member has been convicted in a criminal court but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction. Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.**

The LGA supports this definition of criminal offence and agrees that those more minor criminal offences covered by fixed penalty notices should not be covered by the code.

### **3 CLG proposes that for the purposes of the member code, that official capacity be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority. Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.**

The LGA supports this definition of official capacity.

### **4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?**

We believe elected members have an obligation to uphold the legal standards of the country they are visiting, whether in a private or official capacity. However the LGA recognises that the application of the code to activities not illegal in the UK would be extremely difficult therefore we agree with the proposal.

**5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?**

The LGA agrees with this proposal.

**6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments.**

We support these drafting amendments. There is also a view from some member councils that the members' code is unnecessarily longwinded and complicated.

**7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?**

No, the LGA believes the aspects of conduct currently included are appropriate.

**8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.**

No.

**9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code.**

Yes, we believe this is a reasonable timeframe.

**10 *Members should not engage in conduct which constitutes a criminal offence.* Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?**

Yes

**11 It is proposed that criminal offence be defined as any conduct that has resulted in a criminal conviction. Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?**

We agree with this definition. However it is not immediately clear why this is different to the definition in the code.

**12 It is proposed that 'official capacity' be defined as 'being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority. Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?**

Yes.

## Model code of conduct for employees

### 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

The LGA has maintained that a statutory code is not necessary as authorities already have well developed codes of conduct which apply to their employees. These are founded on a commitment to the highest standards of ethical behaviour which was set out in 'Code of Conduct for Local Government Employees' produced by the then Local Government Management Board and local government associations in 1994. The commitment is also set out in the National Joint Council for Local Government Services National Agreement on Pay and Conditions of Service as an individual commitment to conduct of the highest standard and a commitment that local codes will be developed. The consultation document recognizes that authorities have their own codes.

There is also a further central question as to if there were to be a statutory code, how is it to apply? Earlier consultation talked of deeming the code into contracts of employment. This current consultation uses a number of separate formulations, some of which would seem to contradict each other:

1.2 states that the paper '...seeks comment' on proposals to introduce a **requirement for authorities to incorporate** a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees' ("the employees' code").

3.5 states that '...the code should **not constrain an authority's ability to develop its own code** reflecting local needs and conditions'. It goes on to say that authorities should be free to adopt supplementary provisions beyond the employees' code in order to provide their staff with an effective ethical framework within which to work.

3.6 states 'We are proposing that a model employees' code – a model that authorities may augment if they wish – be introduced, which **will be incorporated into local government employees' terms and conditions of employment.**'

3.16 states that Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be **deemed to be incorporated** in employees' terms and conditions of employment.

This raises the question, if there is to be a statutory code - how is it to be achieved? If the code is to be deemed into contracts (as mentioned in the Local Government Act 2000), which bits will be deemed? Will this mean only the statutory provisions or will this also include local provisions? The impact of additional, legal or contractual requirements being introduced must be considered. For example, it would not be appropriate to simply rely on a deeming provision for the necessary changes to take effect and be relied upon as a basis for disciplinary action without further communication to employees of the new requirements.

### 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

First a point about the suggestion in paragraph 3.2 of the consultation paper that one of the ways forward would be to follow the model of the Welsh code of conduct which only applies to a certain category of defined senior officers. This is not the case. The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001 SI. 2280, (W.170) sets out the code which applies to 'qualifying employees'. Qualifying employees are all employees of a relevant authority other than those employees explicitly excluded by regulations made by the National Assembly for Wales under s.82(8) of the Local Government Act 2000. To date the only regulations made under that section are The Code of Conduct (Non-Qualifying

Local Government Employees) (Wales) Regulations 2001 SI. 2278 (W.168). These regulations exclude only teachers and firefighters and do not exclude staff below any notional concept of senior officer. Therefore this reference is misleading.

Paragraph 3.7 of the consultation paper states that the logic of the proposal to exclude certain professions is based on the fact that they have their own code of conduct. This is not wholly accurate. It is best that we look at the stated occupational groups individually:

### **Firefighters**

There is no national code of conduct applying to firefighters as such, although many may be covered by local codes adopted by individual fire and rescue authorities or specific standards set out in Brigade Orders. In addition some aspects of the proposed code are covered by the National Joint Council for Local Authorities Fire and Rescue Services Scheme of Conditions of Service, e.g. equalities issues and there are national role maps for roles in the fire service which incorporate behavioural standards to some extent.

We believe that the suggested firefighter exclusion is based on the fact that they were covered by The Fire Services Discipline Regulations 1985, but these have now been repealed and replaced with a nationally agreed disciplinary procedure. In any event the Discipline Regulations were not a code of conduct. They were a set of essentially procedural rules relating to disciplinary action.

It would therefore seem that if there is to be a statutory code, there is little argument for excluding firefighters, as the broad general principles should apply equally to this group of employees.

### **Teachers**

We understand that the proposed exclusion of teachers is based on an assumption that they are covered by their own code of conduct. There is a General Teaching Council Code of Conduct and Practice for Registered Teachers. It sets out very firm standards for behaviour and breaches of the code can result in being barred from teaching in the maintained sector.

However, there are two points:

1. It can be viewed as quite a narrow code in comparison with the proposed employee code.
2. It is not an employer's code. Although the values will influence the behaviour of teachers in their employment, as is the intention, breaches of the code are dealt with by the appropriate committees of the General Teaching Council. This regulatory role performed by the GTC normally applies only in relation to those teachers already found to be below accepted standards by their employer, and after employer procedures have been completed.

Therefore there is not a code that covers the same ground as the proposed statutory code. If there is to be a national code, there is no logical reason to exclude teachers.

### **Community Support Officers**

The Police Staff Council (the national negotiating body responsible for negotiating terms and conditions of employment for police staff, i.e. non-uniformed employees of police authorities) have recently reached agreement on standards of professional behaviour. Details are set out in Joint Circular No. 54 of 11 September 2008.

This agreement incorporates within its scope clerical, administrative and professional staff of police authorities and includes community support officers. There is therefore a national code for community support officers and other non-uniformed police staff. However, this is part of a national collective agreement. It will take effect if the

terms are incorporated/adopted by all police authorities. There are some police authorities who sit outside of the national collective bargaining framework. Therefore this does not apply to them unless they take steps to introduce it.

It covers some of the same ground of the proposed employee code but not all as it addresses some issues of particular importance to the police service such as the use of restraint, for example.

Therefore police authorities are very much in the same position as the vast majority of local authorities who have already introduced their own codes of conduct.

If the PSC code is sufficient to suggest that no further action is required for police authorities then this logic should also mean that there is no requirement to produce anything further for local authorities and fire and rescue authorities who have already adopted their own codes

## **Solicitors**

The solicitors code of conduct again is not an employer's code and does not cover all of the same ground.

Sanctions imposed by the Solicitors Regulation Authority Solicitors Disciplinary Tribunal are independent of any action imposed by the employer of the solicitors who would wish to take their own disciplinary action in the event of misconduct. Indeed most cases before the Disciplinary Tribunal are likely to be against partners of legal firms who are ultimately responsible for their own actions and the actions of their employees.

## **General**

If these arguments were to be successful then there would also be arguments that, for example, town planners (members of the Royal Town Planning Institute), HR professionals (members of the CIPD), trading standards officers (members of the Trading Standards Institute), social workers (registered with the General Social Care Council - ultimately this will also apply to other social care staff and Directors of Social Services) should also be excluded along with employees who are members of any other professional body which has its own code of conduct/ethics.

Professional codes are about approaches to issues directly linked to the particular profession. Discipline for breaches of such codes are normally undertaken by the professional body not the employer. If there is to be a local government code it must be linked to the core principles of public service and present the ability of the employer to take disciplinary action where the code is breached. In practice both forms of code (professional and employer) will be relevant. They are probably unlikely to conflict but more likely to complement each other.

The provisions of professional codes vary. Some are more prescriptive and established. For some there may be no obvious link between the employer and the professional body. Therefore it is quite possible for an employer to discipline or dismiss an employee for a breach of their terms and conditions (employers code of conduct) without it being a situation in which the professional code was breached or even if the professional code had been breached, in a situation where the institute would not have initiated disciplinary action, e.g. the institute may not even be aware.

For others there may be a closer link. For example where a teacher is dismissed on grounds of misconduct or incompetence this must be reported to the Department for Children, Schools and Families or the General Teaching Council to determine if there is a case to answer.

In the case of a solicitor for example although he/she will be covered by his/her professional code which applies to a solicitor in the way they conduct themselves in acting for the authority as their client, they are also the employee of the local

authority and so in addition must, within the scope of the code, abide by the expectations of the authority in the manner in which they perform their duties.

Additionally, distinguishing between those employees performing a function who were members of any particular professional institute and so covered by a code of conduct and those who were not members of the institute and so not covered by a professional code would be an onerous task.

**15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?**

As we have said we see no justification for a statutory code but if there were to be one there is no particular logic to exclude any group of staff from the expectation that they would conform to the core values of conduct. All local government staff are accountable to their employer and the majority of employees will be subject to conduct policies of some description. It is for this reason that the LGA has argued that there is no need for a statutory code of conduct. If a statutory code is felt to be necessary then it is important that all employees of an authority are subject to the same code.

An exception might be political assistants. The main principles of the code apply equally to political assistants. However, political assistants are in a different position to other local authority staff due to the nature of their duties. This must be taken into account in the development of the code. Any provisions must be consistent with the principles adopted in relation to the political restrictions regime.

**16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?**

The proposed core values as outlined in the question would seem appropriate. Having said that the section on whistleblowing, which implies a duty to report misconduct, has caused some debate as it did previously. A statement to the effect that employee's have a duty to report misconduct provides apparent simplicity. However, there are identifiable drawbacks if the duty to report were to be incorporated into the code of conduct and deemed into employees' contracts.

A contractual obligation which requires employees to report misconduct could place them in difficult and uncertain situations. Although the duty may on the face of it appear a clear and understandable obligation, the nature of the actions which employees would be contractually obliged to report are more difficult to define with clarity and therefore such a duty would be unsuitable for inclusion in an employment contract. Albeit founded on reasonably common understandings, the very concept of misconduct and the gravity of particular actions will vary from employer to employer and may not always be well defined in disciplinary procedures. This would create uncertainty for employees and managers. For example, employees may feel under an obligation to report every instance of seemingly inappropriate behaviour for fear that they themselves may be subject to disciplinary action if they did not. Managers may be unsure as to when employees should be disciplined for failing to report misconduct and it is possible that situations may occur where a number of employees are punished for the wrongdoing of a single individual. Therefore, too much emphasis on such a clause has the potential to initiate conflict in the workplace and create a climate which would reduce the likelihood of effective teamworking.

In any event, employees are subject to the implied duty of faith which could place them under an obligation to report such matters in certain circumstances. For example, where the employee is in a senior position or where the misconduct is such that it could not reasonably be ignored.

On balance we remain unpersuaded of the need for the introduction of a contractual duty to report misconduct for the reasons given. From a practical perspective, we take the view that it is better to encourage reporting of serious

issues via a whistleblowing procedure with the associated promotion of high standards of ethical conduct. The development, introduction and promotion of a confidential reporting procedure contributes to the development of a more positive, inclusive and healthy working environment. Most authorities have wisely already introduced such procedures which appear to be serving them well. If a statutory code becomes necessary, we would hope that the code of conduct would provide a clearer implied obligation on authorities which have not already done so, to introduce a whistleblowing procedure, and we would urge the DCLG, in its publicity material and guidance on the code of conduct, to make all efforts to ensure that all authorities have such a procedure in place.

**17 Should the selection of ‘qualifying employees’ be made on the basis of a “political restriction” style model or should qualifying employees be selected using the delegation model?**

This question is only relevant if the need for a two tier code is established.

The political restriction regime has its difficulties but it does provide a common albeit sometimes complex procedure for establishing whether an employee is in an influential position. Given the change in arrangements for appeals against political restriction introduced in April 2008 it would be helpful if new guidance could be provided on the rules and the logic. The approach set out in the former Independent Adjudicator’s circular letter was very helpful.

However, some authorities are unpersuaded that this approach would be the correct one. There is some support for the delegation based model although it raises questions about onward delegation of the actual duties related to a particular function if in fact they are delegated further to officers at a lower level. In principle this should be a matter for local decision which can reflect seniority and levels of responsibility, set in the context of the size and structure of the organization.

On balance, if a definition of qualifying employee is necessary, the political restriction model has the advantage that authorities would be able to compile a single list to which both political restrictions and these additional further restrictions and obligations would apply, although with this model the position of assistants to political groups would need additional special consideration.

**18 Should the code contain a requirement for qualifying employees to publicly register any interests?**

Any impact of the code on an employee’s private life would have to be justified to comply with the Human Rights Act. If there were a two tier code there should be no significant difficulties with allowing the public access to the list of interests that must be declared. However, the register itself would contain details of an employee’s private life. Allowing the public access to these details could be seen as being disproportionate to the aim that this clause seeks to achieve. The register of members’ interests is available to the public, but there is a difference between the degree of privacy expected by a person who has entered public life and that expected by an employee.

It is presumed that the management of such a list would be the responsibility of the authority’s monitoring officer, with members possibly having rights of access. The public’s confidence in the integrity of the authority should be secured by the knowledge that an adequate system is in place to ensure that conflicts of interest are identified and appropriate action taken. Furthermore, managing public access to the list could lead to unwarranted bureaucracy for authorities.

**19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?**

The question of interests to be registered needs further consideration in light of the responses to the general consultation. This becomes a much more sensitive issue if, for example the register were to be public as the expectations of privacy of an

employee and a councillor are different. It would seem too onerous for an employee to have to register their family home for example.

**20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?**

Given that this section is in addition to the core values it could be that this results in some duplication of requirements which have already been set out in the core values. For example the proposed core values relating to 'Personal interests' cover similar ground to the proposed qualifying employee's requirements under 'Using your position improperly' and to some extent under 'Compromising the impartiality of officers of the authority' in that these are about using your position to influence matters 'improperly'.

**21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?**

The categories of interest which would be required to be registered are similar to those within the Members' Code of Conduct, but as they stand presently could be considered to be unduly intrusive. For example, it might be more appropriate to limit expectations to register to businesses in the authority's area.

Again the question should be subject to further consideration following the wider response to the proposals and the decision regarding the definition of 'qualifying employee'.

**22 Should the employees' code extend to employees of parish councils?**

If there were to be a statutory code intended to apply to employees of local authorities there would seem to be no obvious reason why core values of conduct should not also apply to parish councils.

**ADDITIONAL POINTS RAISED**

**Contractors, partners and part-time staff**

Although there is no direct question in the consultation paper relating to extension of the code of conduct to others there is reference in paragraph 3.13 to the possible extension to contractors, partners and part-time staff. These three are different and each has different considerations.

**Part-time staff**

Part-time staff comprise over 50% of the local government workforce and are employees of the authority in the same way full time staff are. Part-time staff cannot be excluded from any provision of a code which applies generally. Possibly the question was aimed at how to deal with workers who work infrequently or for very short periods with the authority, sometimes referred to as 'casual' staff. However, the same principles of core conduct should also apply to temporary employees however long or short the duration.

**Contractors**

The ability to require adherence to a code of conduct by employees or sub-contractors of contractors will depend on the procurement rules in force at the time. This begs a further question as to how any provision of the code would be enforced, if, for example, a contractor's member of staff breached the code but the contractor did not wish to take disciplinary action against them. In any event without explicit legal provision it may be difficult to argue that the code of conduct was legitimate. For example, would it be feasible to place a requirement of political neutrality on

workers of a construction company fulfilling a local authority contract. Similar issues might apply where the worker is supplied through an employment agency, although this would depend on the terms of the contract with the agency.

## **Partners**

Partnership arrangements are by their nature complex and rife with difficulties in HR terms. If, for example, the partner organisation has its own code then there will have to be very clear understanding of which rules apply and how such rules are to be enforced by the respective managers involved in managing the partnership arrangement.