

**Localism Bill
Standards Clauses**

Since the Bill was first introduced, considerable changes have been made to the standards clauses and further changes now seem likely. The Bill is currently going through the report stage in the House of Lords and both Government amendments and other amendments are being considered. Parliament is in recess at present during the political party conference season. The Lords will resume the report stage debate on 10 October.

It became apparent on 14 September that the Government was likely to lose the vote on an amendment for local authorities to have a code of conduct moved by Lord Bichard and supported by both Conservative and Lib-Dem peers. This prompted a Government whip, Lord Taylor, to agree to open discussions on the content of the clauses as a customary means in the Lords of avoiding Government defeat. The amendment was not moved and the government amendments were accepted (presumably for the time being).

The following is a brief summary of the current clauses in the Bill;

Chapter 4 Predetermination

Cl 14 Prior indications of view of a matter not to amount to predetermination etc

Chapter 5 Standards

Cl 15 Amendment of existing provisions

Applies Schedule 4 which repeals most of the LGA 2000 standards provisions

Cl 16 Duty to promote and maintain high standards of conduct

Cl 17 Voluntary codes of conduct

Enables a LA to adopt a code. Includes a requirement for LA to consider investigation in response to allegation of failure to comply, and to investigate as appropriate and to take action.

New Cl 18 Register of interests

Requiring MOs to maintain register of interests (including for PCs). Up to LAs to determine what to include, subject to below.

New Cl after 18 - Disclosure of pecuniary interests on taking office

Requires pecuniary interests to be notified to the MO. Limits pecuniary interest to the interests of the cllr and spouse/partner. Description of pecuniary interest to be in regulations.

New Cl after 18 - Pecuniary interests in matters considered at meetings or by a single member

Restricts a member having a disclosable pecuniary interest from participating in any discussion of the matter at the meeting and voting. Requires interest to be notified to MO if interest not on register. (Requirements subject to sensitive interest and dispensation provisions below.)

Standing orders may provide for exclusion of a member who is restricted from so participating.

New CI after 18 - Sensitive Interests

Enables interests where disclosure of the detail could lead to the cllr being subject to violence or intimidation to have the detail omitted from public disclosure.

New CI after 18 - Dispensations from section (Pecuniary interests in matters considered at meetings or by a single member)

Provision for authority to grant dispensation to relieve member of participation and voting restriction (above) in certain circumstances

CI 19 offence of breaching regulations under section 19

Amends CI 19 to provide offences of failing to comply with obligation to disclose pecuniary interest and participating in contravention. Also of providing false or misleading information in relation to the disclosure obligations.

New CI after 19 Delegation of functions by Greater London Authority

Enables Mayor of London and London Assembly to arrange for functions under these clauses to be delegated to GLA staff and to a 'standards committee'. (This provision requested by GLA)

The new standards framework

The minimum framework to operate a code of conduct would appear to include the following;

- a) A duty to maintain standards
- b) A duty to adopt a code (or list of agreed standards)
- c) The means of including uniform contents in the code across local government
- d) Arrangements to enforce the code
- e) Arrangements for applying sanctions
- f) Where there are other statutory requirements (e.g. about interests and criminal sanctions) there should be clarity about any overlap of jurisdiction.

A mandatory code

It seems likely that, following the concession of Lord Taylor in the House of Lords, the Government will include a provision requiring local authorities to adopt a code. It seems clear that, under the deregulation strategy, the Government does not want to impose a statutory code formulated by regulation. There is concern however that codes of conduct should be uniform across principal councils (or at least contain mostly uniform provisions), and presumably the same for parish councils. As the representative bodies of principal authority and parish councils respectively, there is logic in The LGA and NALC accepting leadership responsibility for producing uniform code provisions.

A way forward would be for a provision to the effect that;

- a) Local authorities must adopt a code of conduct
- b) This obligation be met by the adoption of a code containing requirements recommended by LGA and NALC respectively (with the option available for local authorities to include additional requirements as they see fit)

c) The LGA and NALC be required to promulgate codes of conduct (and to review them and revise them as appropriate)

Current CI 17 would require amending accordingly.

Enforcement and sanctions

CI 17 is fairly bald on what arrangements a local authority needs to have in place to enforce its code of conduct and also as to what sanctions could be taken by a local authority for breach. The power to 'take action' would appear to be limited to making administrative arrangements and presumably passing a decision of censure. This sort of limited sanction would avoid the application of the 'fair trial' obligations under Human Rights legislation and obviate the need for any formal appeal mechanism. Whilst the broad flexibility allows LAs to be proportionate in what they do, it would seem to be reasonable to enable LAs to suspend payment of allowances for a limited period (assuming this power is not already available to local authorities - the position is not completely clear.)

Overlap with criminal provisions

One possible overlap in the current Localism Bill provisions is the extent that a local authority could take any action in addition (or substitution) to that taken (or not taken) by the Police, CPS and Court in relation to a criminal infringement. The situation is not clear. Can/should the code repeat the statutory requirements on interests?

Under the new CI 18 pecuniary interests are limited. The code would need to make provision for other pecuniary interests (i.e. those of other members of family, relatives, friends, which currently could expose a LA to a bias claim if not otherwise dealt with).

The code would also need to deal with other interests (e.g. as per the existing code) which, if not dealt with, would put the trust relationship vis a vis the electorate at risk.

Predetermination

It remains the Government's position that CI 14 does not involve a change in the law. (Which, of course, begs the question why the clause is necessary in the first place!) An effect of the clause is that evidence available to a Court under current law, that might be relevant as to whether a decision is tainted by bias, would no longer be available to the Court to consider. So a decision that *might* be tainted by bias today, having regard to pre decision evidence, would not be so tainted when the clause comes into effect.

So a change in the law is surely being made by CI 14.

The courts have, of course, gone a long way in recognising that politicians need to be politicians and that not all what they say is necessarily what they do at the point of decision making. In effect, the courts already apply a presumption against bias in relation to local elected representatives to enable democracy to work in the way it has developed.

Conclusion

The ill thought through approach of the Government to changing the standards regime of local government is causing a problem for Parliament in dealing with the Localism Bill. On the hoof amendments are at risk of creating more problems than they resolve. The current clauses do not provide a clear and cohesive framework for local government to work on. Further compromise amendments will hopefully improve the substitute framework the Government is now applying in substitution for the 2000 Act regime. One cannot help thinking that Parliament will have no option but to again review the application of standards to local government in due course. One wonders what Lord Nolan might have thought of it all. Sadly, he died in 2007.

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Ethical Governance Portfolio
Draft CODE OF CONDUCT

Introduction

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code.

You are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the "Nolan Principles – the seven principles of public life" which are set out at Appendix 1.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

Interpretation

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;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

"member" includes a co-opted member and an appointed member.

General Obligations

1. When acting in your role as a member of the authority:

1.1 **Do** treat others with respect.

1.2, **Do not** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.3 **Do not** 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—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional *legal* advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; and
 - (cc) you have consulted the Monitoring Officer prior to its release; or

1.4 **Do not** prevent another person from gaining access to information to which that person is entitled by law.

2. When using or authorising the use by others of the resources of the authority—

2.1 **Do** act in accordance with the authority's reasonable requirements including the requirements of the authority's ITC policy and the policies listed at appendix 3, copies of which have been provided to you and which you are deemed to have read ;

2.2 **Do** make sure that such resources are not used improperly for political purposes (including party political purposes); and

2.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Interests [Subject to localism Bill]

3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **Do** act solely in terms of the public interest and **Do not** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.

4. There will be no requirement for you to declare or register any gifts and hospitality; however **Do not** accept any gifts or hospitality in excess of £50.00 (Fifty Pounds).

Disclosure and participation [Dependant on contents of interests Above]

5. At a meeting where any such issues arise, **Do** declare any personal and/or professional interests relating to your public duties and **Do** to take steps to resolve any conflicts arising in a way that protects the public interest.

6. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer

or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **Do not** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **Do not** vote in relation to such matters.

7. There are some decisions that your authority will need to make that could affect every member. A list of these is set out at Appendix 2. **You may** take part in these decisions *unless* you fall into one of the exceptions set out in the list.

8. **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.

Pre-determination or bias [Subject to Localism Bill provisions]

9. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **Do not** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

10 When making a decision, **Do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

Interests arising in relation to overview and scrutiny committees [Subject to Localism Bill provisions]

11. In relation to any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where—

11.1 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

11.2 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 11.1 and you were present when that decision was made or action was taken;

Or

11.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

You may attend 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 business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

APPENDIX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

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

INTEGRITY

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

OBJECTIVITY

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

ACCOUNTABILITY

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

OPENNESS

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

HONESTY

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

LEADERSHIP

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

APPENDIX 2

Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions 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.

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