

A meeting of the **STANDARDS COMMITTEE** will be held in **ROOM CVSO1A, CIVIC SUITE, PATHFINDER HOUSE, ST MARY'S STREET, HUNTINGDON PE29 3TN** on **THURSDAY, 1 DECEMBER 2011** at **4:00 PM** and you are requested to attend for the transaction of the following business:-

## **APOLOGIES**

### **Contact**

1. **MINUTES** (Pages 1 - 4)

**CDeller  
388007**

To approve as a correct record the Minutes of the meeting held on 8th September 2011.

2. **MEMBERS' INTERESTS**

To receive from Members declarations as to personal and/or prejudicial interests and the nature of those interests in relation to any Agenda items – please see Notes 1 and 2 below.

3. **REPORTS OF SUB-COMMITTEES**

(a) **Referrals (Assessment) Sub-Committee**

The Sub-Committee has met on 21st October and 3rd November 2011.

At the first meeting –

- the Sub-Committee re-visited an earlier case involving a former Member of Upwood and The Raveleys Parish Council which it had referred for investigation. In the light of new information, the Sub-Committee agreed not to take any further action to pursue the investigation but asked that the allegation be referred to, as appropriate, in the event that any further complaint is submitted under the current code of conduct.
- the Sub-Committee decided to take no further action in a case which had been self referred by a Member of the Standards Committee. The Sub-Committee considered that the action taken by the Member was that of a reasonable person in the circumstances which had been presented.

On 3rd November –

- the Sub-Committee considered a complaint involving a Member of Huntingdonshire District Council. The Sub-Committee referred the complaint to the Monitoring Officer for

other action. The Monitoring Officer subsequently secured an apology from the Councillor concerned and an undertaking from him to pursue local issues on behalf of the complainant without further delay.

Three further complaints will be considered by the Sub-Committee on 29th November and the outcome in each case will be reported by the relevant Chairman.

(b) **Review Sub-Committee**

The Review Sub-Committee met on 14th November 2011 to consider a decision previously made by the Referrals Sub-Committee about the conduct of a Member of St. Ives Town Council. The Review Sub-Committee decided to uphold the original decision not to take any action on the complaint.

(c) **Standards (Consideration and Hearing) Sub-Committee**

The Sub-Committee has not met since September.

**4. LOCALISM ACT AND NEW STANDARDS REGIME**

**C Meadowcroft  
388021**

- (a) Paper presented by the Monitoring Officer and Head of Legal and Democratic Services (Pages 5 - 12)
- (b) Press Release issued by the Association of Council Secretaries and Solicitors (ACSeS) dated 27th October 2011 (Pages 13 - 14)
- (c) Preliminary Draft Code of Conduct - example published by ACSeS (Pages 15 - 20)

**5. TRAINING UPDATE**

**C Deller  
388007**

Since the last meeting, the Monitoring Officer has presented training on the Code of Conduct to Members of Yaxley and Farcet Parish Councils at a session held on 15th November 2011.

Thirteen Members were in attendance including one Councillor from Bretton Parish Council (Peterborough).

**6. RECENT CASES OF INTEREST (Pages 21 - 24)**

**C Meadowcroft  
388007**

In a recent Upper Tribunal Case of MC v Standards Committee of LB Richmond, comments were made by Judge Ward about the meaning of the phrase "acting as a representative of your authority" in paragraph 2 (1) (b) of the Code of Conduct.

As these comments could have serious implications for the interpretation of Members' activity on blogs, twitter and other internet sites, 'Standards for England' have revised their quick guide to blogging. The changes made to the guide are relatively minor but reflect the comments made by the Judge that 'official capacity' should make reference to the conduct of the Member that amounts to acting etc. as a representative of the Authority.

Copy of the revised guide to blogging and details of the original determination are enclosed.

7. **SURVEY OF PUBLIC ATTITUDES TOWARDS CONDUCT IN PUBLIC LIFE 2010** (Pages 25 - 28)

**C Meadowcroft  
388021**

The findings of a national survey of public attitudes towards the standards of conduct of public office holders in the UK have recently been published. Although not directly related to standards of conduct in local government, the perceptions of the public to standards in public life generally may be of interest to the Committee. A copy of the Executive Summary is enclosed.

8. **DATE OF NEXT MEETING**

To note that the next meeting of the Committee will be held at 4pm on Thursday 1st March 2012 in the Civic Suite, Pathfinder House, St. Mary's Street, Huntingdon.

Dated this 23 day of November 2011



Head of Paid Service

**Notes**

1. *A personal interest exists where a decision on a matter would affect to a greater extent than other people in the District –*
  - (a) *the well-being, financial position, employment or business of the Councillor, their family or any person with whom they had a close association;*
  - (b) *a body employing those persons, any firm in which they are a partner and any company of which they are directors;*
  - (c) *any corporate body in which those persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or*
  - (d) *the Councillor's registerable financial and other interests.*
2. *A personal interest becomes a prejudicial interest where a member of the public (who has knowledge of the circumstances) would reasonably regard the Member's personal interest as being so significant that it is likely to prejudice the Councillor's judgement of the public interest.*

**Please contact Ms C Deller, Democratic Services Manager, Tel No 01480 388007/e-mail: Christine.Deller@huntsdc.gov.uk if you have a general query on any Agenda Item, wish to tender your apologies for absence from the meeting, or would like information on any decision taken by the Committee.**

**Specific enquiries with regard to items on the Agenda should be directed towards the Contact Officer.**

**Members of the public are welcome to attend this meeting as observers except during consideration of confidential or exempt items of business.**

Agenda and enclosures can be viewed on the District Council's website –

[www.huntingdonshire.gov.uk](http://www.huntingdonshire.gov.uk) (*under Councils and Democracy*).

If you would like a translation of Agenda/Minutes/Reports or would like a large text version or an audio version

please contact the Democratic Services Manager and

we will try to accommodate your needs.

***Emergency Procedure***

*In the event of the fire alarm being sounded and on the instruction of the Meeting Administrator, all attendees are requested to vacate the building via the closest emergency exit.*

## HUNTINGDONSHIRE DISTRICT COUNCIL

MINUTES of the meeting of the STANDARDS COMMITTEE held in the Civic Suite, Pathfinder House, St Mary's Street, Huntingdon PE29 3TN on Thursday, 8 September 2011.

PRESENT: Mr D L Hall - Chairman  
Councillors Mrs B E Boddington, R S Farrer, A Hansard and P G Mitchell.

Messrs J Alexander and M Lynch and Mrs S Stafford.

APOLOGIES: Apologies for absence from the meeting were submitted on behalf of Councillors K J Churchill, PJ Downes and T D Sanderson and Mr P Boothman.

### 11. MINUTES

The Minutes of the meeting of the Committee held on 7th July 2011 were approved as a correct record and signed by the Chairman.

### 12. MEMBERS' INTERESTS

Councillor R S Farrer declared a personal and prejudicial interest in Minute No. 13 (a) by virtue of his connection with a case which had been considered by the Referrals (Assessment) Sub-Committee.

Councillors R S Farrer and A Hansard declared personal interests in Minute No. 15 by virtue of their membership of St. Neots Town Council.

### 13. REPORTS OF SUB-COMMITTEES

Mr M Lynch reported on the outcome of a case that had been considered by the Referrals (Assessment) Sub-Committee whilst he was still acting as Chairman. This case involved a Member serving on St. Neots Town Council. However, Mr Lynch considered it inappropriate to discuss the conclusion reached in the case of the Councillor on St. Ives Town Council because the Decision Notice had not yet been issued to the individual concerned.

It was noted that the Review and Consideration and Hearing Sub-Committees had not been required to meet during the period.

### 14. STANDARD FOR ENGLAND - LATEST?

By reference to a press release published by the Association of Council, Secretaries and Solicitors on 28th July 2011 (a copy of which is appended in the Minute Book) the Monitoring Officer reported on the progress of the Localism Bill through Parliament and specifically

upon those provisions of the Bill relating to Standards.

As the Council previously had indicated its support for the formulation of a National Code of Conduct, the Committee was pleased to hear that a cross-party group of peers were pursuing amendments to the Bill which could secure a national code to be issued through the Local Government Association, the retention of Standards Committees with an independent Chairman and the removal of criminal sanctions for breaches of Members' interest provisions.

Members remained of the view that whilst there had been concerns about the current procedures for the assessment and determination of complaints, the public would expect there to be a mechanism through which less serious complaints could be reviewed.

As it was the expectation that the House of Lords would take a view on these proposals shortly, the Monitoring Officer undertook to advise the Committee of any developments as they emerged. Whereupon, it was

RESOLVED

that the content of the press release published by the Association of Council Secretaries and Solicitors be noted.

## **15. APPLICATIONS FOR DISPENSATION**

Having regard to a report by the Head of Legal and Democratic Services and Monitoring Officer (a copy of which is appended in the Minute Book), the Committee considered applications received for dispensation from Colne, Great Gransden, Folksworth and Washingley, St. Neots and Upwood and The Raveleys Town & Parish Councils. Each application had been submitted because previous dispensations had expired on 30th April - the end of the terms of office of the respective Councils.

Members were reminded that, in these cases, dispensation was requested to allow Members of the Town and Parish Councils concerned to discuss and vote on matters relating to community facilities in their parish for a specified period.

The Committee again expressed some unease at granting dispensations in situations where all Members of a Town/Parish Council served as Trustees to a community facility and requested the Monitoring Officer to encourage those Parish Councils from whom applications had been submitted to explore ways to review their Trustee arrangements so that people other than Councillors became Trustees. Given the likelihood of changes to the standards regime and their desire to urge Parish Councils to amend their trustee arrangements in the meantime, the Committee considered whether it would be appropriate to grant dispensations for a two-year rather than four-year period. Whereupon, it was

RESOLVED

(a) that a dispensation be granted to the current Members

of Colne Parish Council to speak and vote on matters relating to the village hall and playing fields in Colne for the period ending 30th April 2013;

- (b) that a dispensation be granted to the current Members of Great Gransden Parish Council to speak and vote on matters relating to Great Gransden Reading Room and Public Recreation Ground for a period ending 30th April 2013;
- (c) that a dispensation be granted to the current Members of Folksworth and Washingley Parish Council to speak and vote on matters relating to the Village Hall for a period ending 30th April 2013;
- (d) that a dispensation be granted to the current Members of St. Neots Town Council to speak and vote on matters relating to St. Neots Outdoor Swimming Pool and Ackerman Street Playing Field, Eaton Socon for a period ending 30th April 2013; and
- (e) that dispensation be granted to the current Members of Upwood and The Raveleys Parish Council to speak and vote on matters relating to the Charities associated with allotments for the poor in the Parish for a period ending April 2013.

## **16. LOG OF CODE OF CONDUCT ENQUIRIES**

The Committee received and noted the Code of Conduct enquiries which had been recorded by the Head of Legal and Democratic Services and the Monitoring Officer since the last meeting in July (an extract of the log is appended in the Minute Book).

## **17. TRAINING UPDATE**

The Monitoring Officer reported that, since the last meeting, he had presented training on the Code of Conduct to St. Neots Town Council and that enquiries had been made about the possibility of sessions for Huntingdon Town Council and for several parishes in the north of the District hosted by Farcet Parish Council.

## **18. DATE OF NEXT MEETING**

It was noted that the next meeting of the Committee would be held at 4pm on Thursday 1st December 2011.

Chairman

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**LOCALISM ACT AND NEW STANDARDS REGIME  
(Report by the Head of Legal and Democratic Services  
and Monitoring Officer)**

**1. INTRODUCTION**

- 1.1 This report sets out the new Standards provisions applying to all “relevant authorities” in England, as contained in the Localism Act, which was eventually enacted on 15 November 2011. “Relevant Authorities” includes District and Town and parish Councils, as well as a number of other public bodies, e.g. fire and police authorities and the County Council.
- 1.2 The Government, under some pressure, brought forward extensive amendments very late in the day in the House of Lords, but resisted all non-government amendments. Some amendments show evidence of under-considered drafting, and may leave problems of interpretation and implementation.
- 1.3 The standards provisions which were in the Local Government Act 2000 will be repealed and replaced by sections 26 - 37 of and Sch.4 to, the Localism Act.

**2. IMPLEMENTATION DATE**

- 2.1 The Government continues to talk of 1 April 2012 as the implementation date. It remains to be seen if this allows adequate time for proper consultation and consideration of the regulations required to introduce the Register of Disclosable Pecuniary Interests (see Section 8).

**3. DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT**

- 3.1 Each “relevant authority” will be under a duty to promote and maintain high standards of conduct by elected and co-opted members of the authority. In particular the relevant authority will be required to adopt a code of conduct (see Section 5 below). The Act provides no real mechanism by which authorities can enforce high standards of conduct.

**4. STANDARDS COMMITTEES**

- 4.1 The provisions for the establishment of statutory Standards Committees (s.55 of the LGA 2000) are omitted. Accordingly, if an authority decides to delegate any standards functions to a committee or sub-committee, that would be an ordinary committee or sub-committee established under s.102 of the LGA 1972. That means:
  - 4.1.1 The new Independent Persons (See below) would not be able to be voting members unless the committee or sub-committee was merely advisory (i.e. recommending to Council);

- 4.1.2 Any such Standards Committee is now subject to the normal political proportionality rules;
- 4.1.3 Standards Committees would be subject to the same requirements on confidential and exempt information under ss.100A to K of, and Sch.12A to, the LGA 1972 as any other Committee. This means that the initial assessment process is no longer automatically confidential;
- 4.1.4 Up until the very last minute, at 3<sup>rd</sup> Reading, the Government's intention was that parish councils should deal with allegations against their own members. However, in a complete U-turn at 3<sup>rd</sup> Reading, the Government required district and unitary authorities responsible for having arrangements for investigating and determining allegations against parish councillors, but has not provided how this might be done in practice and gives standards authorities no powers to require parish councils or parish councillors to co-operate in this process.

## **5. CODES OF CONDUCT**

- 5.1 Each authority is required to adopt a Code of Conduct, which can only apply to members and co-opted members when acting in their capacity as a member or co-opted member. The General Principles and the Model Code are revoked, but an authority's Code must comply with seven principles, which are similar to the ten General Principles that we had before, and provide for the registration of non-disclosable pecuniary interests and non-pecuniary interests (see below). Otherwise, authorities are free to determine what they put in or leave out of a Code. Any decision to adopt or not to adopt a local Code must be taken at full Council.
- 5.2 The abolition of the Model Code means that different authorities may have very different Codes. A councillor who is a member of more than one authority could be subject to significantly different Codes, according to whether he/she is currently acting on this or that authority. In order to try and address this issue Monitoring Officers from across Cambridgeshire are meeting with the aim of agreeing, if possible, a standard code of conduct.

## **6. BREACH OF CODE**

- 6.1 After an authority adopts a Code, it is then under a duty to "have in place arrangements" to deal with complaints of breach of the Code. This must comprise arrangements for investigation of complaints and arrangements "under which decisions on allegations can be made". In the case of district and unitary authorities, this also applies to allegations in respect of parish councillors in their areas.
- 6.2 The key differences from the previous regime are:
- ◆ The rigidity of the Referrals, Review and Hearing Sub-Committees process is repealed, so that authorities have discretion to set their own procedures and to delegate more of the process. So it would be possible for an authority to provide that the initial assessment and decision whether to investigate be undertaken by the Monitoring Officer, perhaps after consultation with the Independent Person. There is no requirement for a review stage. Indeed the statutory requirement for a hearing disappears, and the Act speaks of the possibility of the authority finding that a member has broken the Code without even having held an investigation. However, there would be strong arguments that natural justice would demand that no decision on whether there had been

a breach of code or as to any consequent action could be taken without giving the member an opportunity to be heard and to test the evidence. It would not seem appropriate to delegate substantive decisions solely to Monitoring Officers, and full Council would be inappropriate as a forum for conducting such a hearing, so it is likely that most authorities will still need a Standards Committee or for it to be incorporated within the role of Corporate Governance Panel, to undertake these functions at member level.

- ◆ The abolition of statutory Standards Committees in England means the removal of the exclusion of Referrals and Review Sub-Committees from public access to information provisions. As normal Section 101 Committees, they are now subject to the normal rules, so that their agenda and reports must be published five clear days before the meeting, and the meetings must be conducted in public unless there are over-riding reasons to the contrary.
- ◆ There is greater scope to enable the Monitoring Officer to seek local resolution of a complaint before a decision is taken as to whether the complaint merits investigation. This may enable the more minor or tit-for-tat complaints to be taken out of the system without the full process previously required.
- ◆ The Act gives no powers to undertake investigations or to conduct hearings. So there is no power to require access to documents or to require members or officers to attend interviews and no power to require the member to attend a hearing.
- ◆ The Act gives authorities no powers to take any action in respect of a breach of the local Code. Amendments which would have given authorities an express power to suspend a member from Committees for up to 6 months were never moved, and the Secretary of State suggested in debate that authorities could do so under existing powers. However, as it stands, such removal would require the consent of the member's group leader. Authorities have been given no powers to impose alternative sanctions, such as requiring an apology or training. Accordingly, other than naming and shaming the individual member, it is unclear whether the authority can take any action, beyond administrative actions to secure that it can continue to discharge its functions effectively per *R v Broadland DC ex p Lashley [2001] EWCA Civ 179*. This is more problematic in respect of parish councils, over whom the district or unitary council has no powers, and who are under no obligation to have regard to any findings of the district or unitary authority.
- ◆ As set out above, district and unitary authorities are now responsible for having arrangements for investigating and determining allegations against parish councillors; however, the Lords' amendments do not provide how this might be done, and they did not give district and unitary authorities any powers to require parish councils or parish councillors to co-operate in this process.

6.3 In the LGA 2000, the power of sanction came as part of a package with the safeguards to ensure that such power was exercised fairly. Without the procedural requirements (notably Independent members of Standards Committees, and the requirement that such decisions be taken by Standards Committees or Sub-Committees), it would be inappropriate to give authorities a power of sanction which could be abused for party political advantage. However, the fact that authorities must define standards of conduct in their local Code, and must consider and investigate breaches of Code, may give rise to a degree of frustration for complainants when a member is found to have been in deliberate breach of the local Code, perhaps for personal advantage and yet the authority has no ability to impose sanctions or to prevent the member continuing to act in exactly the same manner.

## 7. INDEPENDENT PERSONS

- 7.1 At the last moment, the Government amended the Act to require every principal authority to appoint one or more Independent Persons.
- 7.2 Independent persons would be appointed by advertisement and application, and there are strict rules preventing a person from being appointed if they are a friend or relative to any member or officer of the authority, or of any Parish Council within the authority's area.
- 7.3 The functions of the Independent Person are as follows:
- ◆ They **must** be consulted before the authority takes a decision to investigate any allegation. So it would appear reasonable to delegate this decision to the Monitoring Officer after consulting the Independent Person;
  - ◆ They **may** be consulted by a member of the authority against whom an allegation has been made, as well as by a parish councillor in similar circumstances. But, if they were consulted before the Monitoring Officer consulted them on a decision whether to investigate, it may affect their impartiality. If consulted by the member once the investigation had been completed, that would make it hard for them to play any impartial or moderating role on any decision as to whether the authority should take any action on the breach. As co-opted members, the Independent Person cannot exercise any decision-making functions.
  - ◆ They may be consulted by the principal authority in circumstances where the authority is not taking a decision whether to investigate the allegation. Logic would suggest that the Independent Person might be able to make a useful contribution as a moderator sitting alongside any Hearing Panel, but that would not be practicable if their impartiality had been prejudiced by previously being consulted by the member concerned.

The most significant input from the Independent Person now appears to be in the original decision whether to investigate.

## 8. REGISTERS OF MEMBERS' INTERESTS

### 8.1 The Register

The Monitoring Officer is required to establish a register of members' interests for each authority (i.e. also for parish councils within their area) and to define what interests must be registered. The content of any such register must be approved by full Council. It must contain "disclosable pecuniary interests" (which will be defined in regulations), but the drafting also provides that an authority's Code must require registration of 'interests other than pecuniary interests', for which no definition is provided. The lack of standard definition of such interests, and the degree of local discretion creates scope for considerable local variation, so that a councillor may be subject to very different requirements in different capacities.

The Monitoring Officer is responsible for ensuring that each authority's register of interests is kept within the principal authority's area (e.g. at the principal authority's offices). For parish councils, the district or unitary authority's Monitoring Officer must ensure that every parish council's register

is available for inspection within the principal authority's, rather than the parish council's area. Copies of both the District Council's Register of Interests and those of every parish council must be published on the District Council's website and, if the parish council has a website, the parish council must ensure that its own register is accessible on that website.

## 8.2 **Registration**

Every elected or co-opted member is required to notify the Monitoring Officer within 28 days of being elected or co-opted onto the authority of all current "disclosable pecuniary interests", and update the register within 28 days of being re-elected or re-appointed. However, there does not appear to be an express continuing duty to update the register due to a change of circumstances. The Secretary of State will prescribe by regulation what constitutes a "disclosable pecuniary interest", but it will cover the interests of the member, his/her spouse, civil partner or person with whom he/she lives as if they were spouses or civil partners, in so far as the member is aware of his/her partner's interests.

Failure to register any such interest, to do so within 28 days of election or co-option, or the provision of misleading information on registration without reasonable excuse will be criminal offences, potentially carrying a Scale 5 fine (£5000) and/or disqualification from being a councillor for up to five years. However, as prosecution is only at the instance of the Director of Public Prosecutions, it is unlikely that many prosecutions will result. In practice, Monitoring Officers are likely to take the opportunity to remind members of their obligations and only seek to involve the Police when a member fails to respond even when reminded. Notably the provision under which a member who fails to make such registration automatically ceases to be a member is repealed and, once a member has made the initial registration, there is no requirement to update such registrations for changes of circumstances, such as the acquisition of development land, unless and until a relevant item of business arises at a meeting which the member attends.

## 9. **DISCLOSURES OF INTERESTS AT MEETINGS**

### 9.1 **Duty to Disclose Interests**

The requirement for disclosure of interests at meetings applies to the same range of "disclosable pecuniary interests" as the initial registration requirement, and only if the member is aware of the interest. The precision of drafting in the current Code is lost, requiring the disclosure of the interest, rather than the existence and nature of the interest, although the provisions on sensitive interests (below) imply that otherwise the member must disclose both existence and nature. However, where the interest is already on the authority's register of interests, or is in the process of entry onto the register having been notified to the Monitoring Officer, the member is under no obligation to disclose the interest at the meeting. Where it is an unregistered interest, the member is required both to disclose it at the meeting and to register it within 28 days of the meeting at which relevant business is considered.

Interestingly, the duty to disclose arises if the member attends the meeting, as opposed to the present code requirement to disclose before the start of

consideration of the matter in which the member has an interest. This would appear to mean that the member cannot avoid the need to disclose merely by withdrawing during that part of the meeting when the particular item of business is considered. If he/she attends any part of the meeting and a relevant item of business is to be considered, he/she must make disclosure.

Failure to disclose is made a criminal offence

## 9.2 **Prohibition on participation**

The concept of a personal interest, which requires disclosure but not withdrawal, disappears. Instead, where the member has a disclosable pecuniary interest in any item of business at a meeting, or which he/she would deal with as a single executive member or ward councillor, if he/she has a disclosable pecuniary interest he/she is simply barred from participating in discussion or voting on the matter at the meeting, or (as a single member) taking any steps in respect of the matter. The sole exception to this exclusion arises as a result of a dispensation (below), so that the right of a councillor to speak as a member of the public and then depart for the consideration of the matter under para.12(2) appears to have been lost. However, there is bound to be some interesting debate about what constitutes "discussion of the matter".

Participation in the discussion of the matter, or taking steps in respect of the matter, in the face of these prohibitions is made a criminal offence.

## 9.3 **Exclusion from the meeting**

The requirement for the member to withdraw from the meeting room is not set out on the face of the statute, but the statute provides that it may be dealt with in the authority's standing orders. This means that the sanction for a member who fails to withdraw as required in standing orders would be the standard provision enabling a meeting to vote to exclude a disruptive member.

## 9.4 **Sensitive Interests**

The provision introduced in the 2008 Code revision is re-enacted, enabling a member to ask the Monitoring Officer to exclude from the public register any details which, if disclosed, might lead to a threat of violence or intimidation to the member or any person in the member's household, and allowing the member merely to recite at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest.

## 9.5 **Dispensations**

The previous provisions on dispensations, allowing members with a prejudicial interest to get the consent of Standards Committee to participate despite the that interest, did not always work effectively, e.g. the first ground for a dispensation, that more than 50% of the members of the body were conflicted out, did not work because members rarely knew how many members would be conflicted out in sufficient time to allow for convening Standards Committee.

Now the grounds on which a dispensation may be granted are extended, and the power to grant a dispensation can be delegated, for example to the

Monitoring Officer, enabling dispensations to be granted at relatively short notice.

The original ground for granting a dispensation (above) remains, but now restricted to a circumstance where the number of members unable to participate would make the meeting inquorate. But now dispensations may also be granted if:

- ◆ it would be in the interests of persons living in the authority's area;
- ◆ without dispensation the representation of different political groups on the Council would be so upset as to alter the likely outcome of any vote;
- ◆ every member of the authority's executive is otherwise precluded from participating; or
- ◆ the authority considers that it is otherwise appropriate to grant a dispensation.

## **10. TRANSITIONAL PROVISIONS**

The Act makes provision for the Secretary of State to make transitional provisions by statutory instrument, providing that matters under investigation by the Standards Board be transferred to the local authority. It is to be hoped that the completely unrealistic earlier proposals under which authorities would have a period of two months to resolve all outstanding complaints, but with no power of suspension and no appeal, will be re-considered.

## **11. RECOMMENDATION**

The Committee are asked to note the contents of the report.

Contact Officer: Colin Meadowcroft  
Head of Legal & Democratic Services and Monitoring Officer

Telephone – 01480 388021

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## Ministers amend Localism Bill to require authorities to have code of conduct

Thursday, 27 October 2011

Councils and other “relevant authorities” will be required under the Localism Bill to adopt a code of conduct consistent with the Nolan Principles of Public Life as a result of amendments tabled by the government today (27 October).

The changes to the standards provisions come after representations from the Association of Council Secretaries and Solicitors (ACSeS), members of the House of Lords and others.

Other standards-related amendments tabled include:

A parish council will be able to adopt the code of its principal authority and assume compliance by the principal authority with the requirement to adopt a code;

The code must include “provision the authority considers appropriate” in respect of the registration and disclosure of pecuniary and other interests ;

Relevant authorities other than parish councils will need to have in place arrangements under which written allegations that a member has failed to comply with the code can be investigated and decisions made following such investigation;

Such arrangements will need to include the appointment of at least one “independent person” whose views must be sought and taken into account before the authority comes to a decision following investigation. The independent person will also be available (amongst other things) to express his or her views to the member subject to an allegation;

The independent person cannot (amongst other things) be a member or officer of the authority or a relative or close friend of such person. A decision is not to be invalidated “just because” it involved a failure to comply with the code.

Ministers **confirmed in September that they would make concessions** on the proposed local government standards regime in the Localism Bill.

The move came in the face of lobbying from a cross-party group of peers who – in a briefing to members of the House of Lords – warned that there were “serious deficiencies” in the Bill and that there would be a “free-for-all” if it were implemented as originally drafted.

Commenting on the changes, Nicholas Dobson, communications officer at ACSeS said: "Having a mandatory code of conduct provision is a decided step forward. For the previous formulation which required the promotion and maintenance of high standards of member conduct but without providing any firm mechanism to ascertain this was something of non sequitur.

My personal view is that provision for suitable sanctions would be a beneficial addition if codes are to be effective. If there is to be such a provision this might specify censure and suspension of all or part of a member's functions for a maximum of three months, subject of course to fair, lawful and proportionate processes including a right of internal appeal."

The seven Nolan Principles of Public Life are:

Selflessness

Integrity

Objectivity

Accountability

Openness

Honesty

Leadership

## 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.

## 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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# Agenda Item 6

The appellant had been adjudged by the Standards Hearings Sub-Committee to have breached paragraphs 3(1) (respect for others) and 3(2)(b) (bullying) of the Code through his behaviour towards Council officers in sending out certain emails and was suspended for 28 days, a period which had been served by the time of the appeal. His application for leave to appeal on the basis that he was not acting in his official capacity when he sent those emails had been turned down by the First Tier Tribunal (FtT). The Upper Tribunal allowed that appeal and remitted the case to the FtT for a hearing.

During the course of that appeal the judge said the following:

*When one is acting (etc) "as a representative" of an authority is ..... a matter for determination by the tribunal of fact (i.e. a standards committee, or, on appeal, the First-tier Tribunal). I do however consider that, reading the Model Code as a whole, it is evident that "representative" is not to be equated to "member". The Model Code uses both terms and must be taken to have done so deliberately. Accordingly, merely to act, claim to act or give the impression one is acting (etc) as a member is in my view of itself not sufficient unless there is material on which the tribunal of fact can properly conclude that one is acting (etc) specifically "as a representative" of the authority.*

This suggests that to make a finding that a member was acting, claiming to act or giving the impression that he or she was acting as a representative of their authority there must be something about their conduct which amounts to more than simply acting, claiming to act or giving the impression that one is acting as a member. Where official capacity is raised as an issue in cases it would appear that the Upper Tribunal is going to expect the body hearing the case to address official capacity in future by making reference to the conduct of the member that amounts to acting, etc, as a representative of the authority.

This could have significant ramifications for member's activity on blogs, twitter and other internet sites as well as in election or other political material. It is unlikely that most blog, etc postings will contain content that holds the member out to be acting as a representative of the authority rather than simply a member unless that content in some way gives the impression that the member is speaking for the council. However, depending on the circumstances such communications might be regarded as conducting the business of the office of member. This is because it is reasonable to regard communicating with constituents at large about issues of local political interest as being part of the business of the office of a councillor.

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# Blogging Quick Guide

Blogging and social networking are effective methods for councillors to interact with constituents and support local democracy. Used effectively, they can engage those who would not normally have access to local councillors and politics.

Standards for England support the use of such media and encourage councillors to get online. You should think about what you say and how you say it, in just the same way as you would when making statements in person or in writing,

You will also need to think about whether you are acting as a councillor, or giving the impression that you are representing your authority. To make sure you comply with the Code of Conduct (the Code) and to ensure your use of online media is well received we suggest the following general hints.

## Do

- set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog
- keep an eye out for defamatory or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views
- be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network
- ensure you use council facilities appropriately; if you use a council provided blog site or social networking area, any posts you make are likely to be viewed as made in your official capacity
- be aware that by publishing information that you could not have accessed without your position as a councillor you are likely to be seen as acting in your official capacity
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.

## Don't

- blog in haste.
- post comments that you would not be prepared to make in writing or face to face
- use council facilities for personal or political blogs.

## When the Code may apply

Bear in mind the Code when you blog or use social networking sites. You should pay particular attention to the following paragraphs of the Code:

- Disrespect
- Bullying
- Disclosure of confidential information
- Disrepute
- Misuse of authority resources

However, it is difficult to give definitive advice on the application of the Code as each blog and social networking page is different. The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code.

Ethical use of online social media is not limited to what is covered in the Code. We encourage members to respect the **Ten General Principles of Public Life**. While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and authority.

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# EXECUTIVE SUMMARY

This summary provides an overview of the key insights from the 2010 survey on public attitudes to standards in public life. The survey was conducted about eighteen months after the height of the MPs' expenses scandal and nearly eight months after the General Election of 2010 and the creation of the current coalition Government. The survey took place before the height of the phone-hacking scandal in the early summer of 2011.

The analysis conducted on the data, in relation to previous surveys, allows us to chart changes over time and to see which demographic factors and political orientation (such as age, social grade and party-affiliation) are related to particular attitudes. Although the analysis cannot definitively identify causes for changes in attitudes, it is reasonable to consider the changing patterns of response against the background of the political events prior to the survey and to hypothesise about possible connections. The bullet points below identify core findings, drawing attention to especially significant patterns of relationships between attitudes and demographic factors. The subsequent passages of commentary suggest possible explanations for changes between the surveys. A fuller discussion can be found in the report's Overview.

## 1 Key Changes in Overall Perceptions of Standards in Public Life

- Previous surveys showed that most people in GB have a neutral or guardedly positive view of the overall standards of conduct of public office holders in the UK. In the 2010 survey people rated standards of conduct less positively. In the previous three surveys at least four in ten people rated standards as high but by 2010 only about three in ten people rate them as such. In comparison to the last (2008) survey, the number of people rating standards as high dropped by almost 10 per cent and the proportion rating standards as low rose by about 4 per cent. Similarly, the proportion thinking that

standards had deteriorated increased, and the proportion of individuals who thought that standards had improved fell.

- When respondents were asked how they thought standards today compared to those of a few years ago almost half said they thought that standards of conduct amongst public office holders had deteriorated; only about two in ten respondents thought they had improved.
- Overall, supporters of the three main parties, people in higher occupational categories, and ethnic minority respondents have more positive views. Men and young people are also more positive about changes in standards relative to, respectively, women and older people.

The evidence collected shows a long-term decline in public confidence in those holding public office between 2004 and 2010. On many issues, the 2010 results show a steeper decline than in the previous period. It might have been anticipated that there would be a growth in positive attitudes following the General Election and the change in government. In fact, the results suggests that there was no 'bounce' in public confidence following the election, or that any such bounce had collapsed by the time of the survey, or that there was a bounce, but that does not appear as a positive change but serves to mask an even steeper decline in confidence than is reported here.

It is not possible to identify with certainty the cause of people's declining confidence, but it is possible that the expenses scandal has had an impact on people's views and appear to have fed into and exacerbated the long-run trend of increasingly negative evaluations of politicians.

## 2 Trust in Public Office Holders to Tell the Truth

- As in previous surveys it is clear that some professional groups continue to command

public confidence. Front line professionals are rated highly in terms of telling the truth; those working in the media are less trusted, although there is considerable variation between types of media and types of newspaper. Politicians, especially those with whom the public has less direct contact, are rated poorly. In this survey, against the background of the expenses scandal, levels of trust in local MPs fell, and confidence in the media increased across the board. Over the four surveys confidence in tabloid journalists and TV news journalists has increased by 9 per cent.

- As with the assessment of standards, statistical analysis shows that levels of trust in MPs in general and Government ministers tends to be higher among younger voters, those in higher occupational categories, and those from ethnic minorities. Supporters of the parties in government (Conservative and Liberal Democrat) were more trusting of politicians than supporters of Labour and Other parties.

In relation to questions about ‘trusting people to tell the truth’, the evidence is that confidence has declined in local MPs, but not in other professional groups, and there has been some increase in confidence in the media. This suggests both that people do have confidence in areas of public service manned by professionals, but that these views do not affect, and are not (as yet) affected by, their attitudes to politicians. At the same time, it may be that the rise in confidence in journalists is linked to their perceived role in exposing the expenses scandal. How robust that confidence will prove in the face of the details of the phone-hacking scandal remains to be seen.

### 3 Expectations and Perceptions of Westminster MPs

- People’s views as to how national politicians should behave and the priority that people attach to specific criteria of propriety have remained similar since the survey was first conducted in 2004, suggesting a broad and consistent consensus among members of the public on what general standards of conduct are appropriate in politics. The public places particular emphasis on basic honesty, financial prudence and selfless dedication to public service. However, there are also some fluctuations in people’s ranking of the importance of these standards compared to previous years:

- the proportion of individuals ranking not taking bribes in the top three behaviours fell sharply in 2010 (from 42 to 25 per cent);
- being in touch with what the public thinks is more likely to be rated as important;
- not using power for personal gain, and being competent at their jobs on the other hand remained relatively consistently evaluated in comparison to previous surveys, with about 25-35 per cent of respondents ranking these amongst the three most important criteria of appropriate conduct.

Overall, the proportion who state a preference for the criteria of propriety that rated most highly in 2004 has declined, whereas the proportion selecting those rated least highly has increased (in each case between 2008-2010).

- As in previous surveys, the 2010 survey suggests a mismatch between how people think national politicians should behave and what they think actually happens in practice. MPs fall short of what people expect of them on all of the dimensions covered in the survey – with the exception of not taking bribes. The 2008 results suggested the public attached major importance to four key areas of conduct in which MPs are thought to be doing particularly badly.

‘telling the truth’  
 ‘making sure public money is used wisely’  
 ‘being in touch with what the public thinks is important’  
 ‘owning up to mistakes’

In 2010, three further areas enter this list:

‘being dedicated to doing a good job for the public’  
 ‘not using power for their own gain’  
 ‘being competent at job’

- Public satisfaction with the conduct of MPs has declined on every measure except taking bribes since the last survey was conducted. Most worryingly, between 2008 and 2010, the proportion thinking that most MPs are dedicated to doing a good job for the public fell by twenty percentage points (from 46 to only 26 per cent); the proportion thinking that most MPs are competent at their jobs fell by ten percentage points (from 36 to 26 per cent); there was a 14 percentage point drop in the proportion thinking that most MPs are in touch with what the public thinks is important (from 29 to only 15 per

cent); and there were also large drops in the proportion thinking that most MPs set a good example in their private lives (from 36 to 22 per cent), make sure public money is used wisely (from 28 to 18 per cent), that they explain the reasons for their actions and decisions (from 25 to 17 per cent), and that they tell the truth (from 26 to 20 per cent).

In 2010 there was no change in levels of trust in ministers and MPs in general, although some decline in trust in local MPs. However, these more detailed and probing questions about standards of propriety that the public expect MPs to demonstrate do show considerable changes in people's confidence that MPs will conform to these standards.

One possible explanation is that the impact of the MPs' expenses scandal has been considerable, and has exacerbated a trend that earlier surveys identified. Confidence in relation to MPs' conduct has fallen on practically every measure. The results also suggest that concerns with bribery or associated risks of outside influence on political decisions have been overshadowed by concerns with self-serving behaviour on the part of MPs. The increase in the number of areas of concern is most likely a further reflection of decreased public confidence in MPs generally.

#### 4 MPs and Voting in Parliament

- When respondents were asked in 2010 about the kinds of reasons that ought to influence MPs when voting in Parliament, they were slightly less likely to select selfless motives and slightly more likely to accept self-interested motivations relative to previous surveys. In general, however, acting in the public interest remains important. Voting in accordance with what the MP's party election manifesto promised, and therefore honouring a pledge to the electorate, is also widely seen as acceptable. Most people do not want MPs to prioritise their own interests when voting on national issues.
- As in previous surveys, many people seem to reject party loyalties and political leadership as legitimate influences on the decisions that individual MPs take, although these motivations have become more acceptable. The wishes of local party members are seen as a more legitimate influence than the interest of the party at national level. There is little consensus on which single

factor MPs would be most likely to take into account when voting. The most common view, given by a quarter of respondents, is that most MPs would base their decision on what would benefit the country as a whole, which is also the factor most likely to be viewed as a reasonable basis for the decision.

People's views on which factors most influence MPs' decisions appear to have changed to some extent over time. More people believe that MPs base their decisions on what the party's election manifesto promises, and on what would benefit people living in the MP's local constituency. On the other hand, fewer people believe that MPs base their decision on what will make their party more popular or what might affect their political career.

These results suggest an increased complexity in terms of expectations of politicians – with a greater acceptance shown towards the influence of parties at both the national and local level than in previous surveys. It is possible that the experience of coalition government may have had an impact on people's views of the legitimacy of manifesto promises and party influence.

#### 5 Public Office Holders and Accountability

- Respondents are evenly split over whether the authorities are committed to upholding standards in public life. Most respondents are confident that the media will generally uncover wrongdoing by people in public office; fewer have confidence that the authorities would do this, and still fewer had confidence that public office holders will be punished for misconduct. Nonetheless, the levels of confidence in the authorities to uncover and punish wrongdoing are slightly higher than in the 2008 survey.
- In broad terms, confidence in the authorities' and the media's ability to improve standards and uncover wrongdoing is higher among young people, supporters of mainstream parties, and people from the higher occupational grades. People from ethnic minority backgrounds were more likely than White-British respondents to feel confident in the authorities' ability and commitment to improving standards and uncover wrongdoing but had less confidence than White-British respondents in the media's ability to uncover wrongdoing.



Given declining levels of trust and confidence in MPs' conduct, the relatively stable, and in some respects improved, evaluation of the role of the authorities in uncovering offences and punishing offences suggests that while people's evaluation of MPs is affected by the expenses scandal, they retain their confidence in the more general institutions which police public standards was not affected. This, together with a good deal of evidence collected in the surveys over time (such as levels of trust in professionals; the consistency with which certain values are supported; and the reasonably high levels of confidence in wrong-doing being uncovered) suggests that the increasingly negative evaluations of politicians remains framed by a less fluctuating confidence in many British institutions and practices.

## 6 Party Funding

- The 2010 survey included a number of questions on the funding of political parties to assist the Committee in its inquiry into party finance. Most respondents believe that this is an important issue and that it is 'never acceptable' for politicians to do special favours in return for contributions. Respondents are most concerned about large donations, whether from activist groups, large companies, trade unions, or individual donors. Moreover, people largely assume that substantial donations are made for self-interested reasons. About a third of respondents believe that politicians 'very often' do special favours for people and organisations who give large donations; about two in ten respondents think that MPs 'very often' decide what to do based on what their political contributors want. About half of respondents believe that MPs' decisions are conditioned by donations, with very few thinking this was never the case.

The picture in relation to party funding is reasonably clear. A clear majority of people see large donations (over £100,000) as a source of major concern, with at most a fifth of the population thinking that they are not a concern. Moreover, most people believe that donations come with expectations of influence or benefit to the donor, and the vast majority of people believe that, in one way or another, donors do get special favours or do influence MPs' decisions.