Standards in Public Life

Standards of Conduct in
Local Government
in England, Scotland, and Wales

Third Report of the Committee on
Standards in Public Life
Chairman Lord Nolan

Volume 1 : Report

Presented to Parliament by the Prime Minister by Command of Her Majesty

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The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions 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 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.

From: The Right Honourable The Lord Nolan

Dear Prime Minister.

July 1997

I am pleased to present the third report of the Committee on Standards in Public Life. Like our first two reports, it is unanimous.

In preparing this report on local government we have visited over 100 local authorities throughout Great Britain; we have considered over 1,000 written submissions; and we have taken oral evidence from 80 individuals or organisations.

What we have found elsewhere in our studies of public life holds good for local government. Despite instances of corruption and misbehaviour, the vast majority of councillors and officers observe high standards of conduct. The number of people who have used their position in local government for their own ends is small compared with the vast majority who genuinely wish to serve their community. We have been impressed by the positive attitude which local councillors and officers have taken to our inquiry and their awareness that high ethical standards are critical to maintain public confidence in local government.

Nonetheless it is important to have in place mechanisms to prevent misconduct and to deal with it effectively. We have found that councillors and officers are not helped by the system of rules and regulations which have been introduced to govern their conduct. Over the years, the statutory and non-statutory arrangements for codes, registers and declaration of interests, the punishment of misconduct, and so on, have grown into a confused, and confusing, mixture. A lack of clarity about standards of conduct can easily lead to wrongdoing.

Accordingly, we are recommending a fresh start which gives greater responsibility to local government itself for devising and regulating standards of conduct, within a framework that gives consistency of standards and proper enforcement. We want to make sure that each councillor and officer knows what is expected of him or her. We also recommend a strong and rational system of external scrutiny to ensure that freedom is not abused.

Our work has highlighted the need for a statutory sanction for conduct that, while not entailing bribery or corruption, is nonetheless improper. Amongst our 39 recommendations, we propose the abolition of surcharge and the creation of a new statutory offence of misuse of public office. It would apply to all who hold public office, not only to those in local government. We are issuing a consultation paper to seek views on the details of this recommendation.

It would have been impossible for the Committee to cover every aspect of local government which has been raised in the evidence we have received. We have therefore focused on a limited number of key areas which attracted most evidence or where we believed that reform was most warranted. We believe that the principles we have set out in this report, as in our previous reports, should apply across all areas of local government.

Yours sincerely,

Nolan

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Introduction

1. The Committee on Standards in Public Life was established by the then Prime Minister in October 1994, under the Chairmanship of Lord Nolan, to consider standards of conduct in various areas of public life, and to make recommendations.

2. In May 1995 we produced our first report (Cm 2850), on Members of Parliament, the Executive (Ministers and civil servants), and executive non-departmental public bodies (NDPBs), including NHS bodies. In May 1996 we produced our second report (Cm 3270), on further and higher education bodies (including universities), grant-maintained schools, training and enterprise councils (local enterprise companies in Scotland), and housing associations.

3. Our third study has looked at aspects of conduct in local government in England, Scotland and Wales. We announced the study in June 1996, published a consultation paper in July 1996, examined written submissions in autumn 1996, and held public hearings between December 1996 and February 1997. We have considered over 1000 written submissions, taken formal oral evidence from 80 individuals or organisations, and made informal visits to over 100 local authorities.

4. The oral and written evidence we have received has been extensive, and generally of high quality. Because of the complexity of local government, of its operating environment, and of its legislative and supervisory framework, most submissions have addressed themselves to particular points rather than to the overall framework. In the light of all this material we have had to consider very carefully how best to shape our report.

5. To cover every subject raised would have been impossible. We have therefore concentrated on a limited number of key areas: subjects on which we received evidence from very many of the organisations and people that wrote to us, or where we believed there was an obvious need for reform.

6. Our report deals with what are known as 'principal councils', that is county councils, districts councils, and unitary authorities in England, Scotland, and Wales. We did not feel we could extend our work to make recommendations in respect of parish and community councils, although we did receive written evidence about them, and took evidence (which we valued) from the National Association of Local Councils.

7. We hope that parish councils, and their representative bodies will however study the recommendations set out in our report and consider taking account of those which are applicable to their procedures and powers. This is particularly important in view of the likelihood that parish and community councils will gain additional duties as time goes on. This is a welcome development, but one which carries responsibilities as well as opportunities for parish councillors and clerks.

8. Those who wish to examine the full range of evidence we were sent will be able to do so. In line with our previous practice, transcripts of our oral evidence are published as Volume Two of this report, while our written evidence will be made available in bound volumes in the Public Record Office and the Libraries of Record, including the National Libraries of Scotland and Wales.

9. We illustrate the text of this report with quotations from witnesses. We refer to these witnesses by the position they held at the time of giving evidence.

Chapter 1

Summary and List of Recommendations

10. In this report — our third — we have been able to build on the experience which we have gained in examining standards over a wide range of British public life. As with all the other sectors we have examined we have found an enormous number of dedicated and hardworking people. We are of course well aware of the relatively few, but highly publicised, cases where things have gone wrong or people have behaved improperly. But it is important to set such cases in the context of more than 20,000 councillors and 2,000,000 employees in local government.

11. We have commented in our previous two reports that attempting to enforce good conduct through detailed rules, especially where these are based on the presumption that people will naturally misbehave, can itself contribute to wrongdoing. Nowhere is this more true than in local government. Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity over standards of conduct persists and in some cases has grown. We believe that the key reason for this is that responsibility for the maintenance of standards has moved away from local government.

12. We believe that a new start can be made on an ethical framework for local government within the climate of improving relations between central and local government that has now existed for some years. This would take the best of what already exists, but place leading responsibility with local government itself.

13. The effect of this would be a radical change in the ethical framework within which local government operates. We propose:

- a clear code of conduct for councillors developed by each individual council within a framework approved by Parliament;
- that each council should have a Standards Committee to deal with matters of propriety and to have powers to recommend to the full council that errant members should be disciplined;
- the creation of new Local Government Tribunals to act as independent arbiters on matters relating to councils' codes of conduct and to hear appeals from councillors and others;
- the involvement of the courts in imposing penalties for misconduct, to replace surcharge;
- following consultation, a new statutory offence of misuse of public office.

Codes of Conduct

14. While we believe it is important that local authorities themselves should adopt their own codes of conduct, we recognise that this needs to be done within a national framework. There has to be a degree of consistency across local authorities and an assurance that certain minimum standards will be attained by any individual code. We believe this should be achieved by:

- a statement of 'General Principles of Conduct for Local Councillors' approved by Parliament;
- a 'Model Code of Conduct for Local Councillors' prepared by representatives of local government and also approved by Parliament;
- a requirement on each local authority to adopt a local code of conduct which incorporates and reflects the general principles and achieves at least the same effect as the approved model code.

15. This structure would place on each local authority a firm responsibility to think about and adopt a code, within the national framework, to meet its local needs. It would ensure that responsibility for the code was taken by that local authority. It would also enable the local authority to take into account specific local circumstances and to have the flexibility to change the detail of its code if those circumstances changed.

16. Although it is important that responsibility for drawing its own code is placed firmly on each individual local authority, there should be for an independent arbiter to consider whether a local authority's code has 'at least the same effect as' the model code approved by Parliament. A Local Government Tribunal set up under the Tribunals and Inquiries Act would fulfil this role. We set out in the report some thoughts on how the Tribunal might operate and be staffed.

17. The above structure would replace the present National Code of Local Government Conduct which is widely felt to be confusing and unhelpful. **Recommendations R2–7 and R23–25**

Registration and declaration of interests

18. The individual local authority codes which we recommend above will produce far greater clarity for the individual councillor. We believe that this clarity needs to be carried through into the rules on the registration and declaration of interests and into the action to be taken by councillors when faced with a potential conflict. We believe these rules should cover:

- a public register of interests covering the pecuniary interests of a councillor, close family members and members of his or her household; and non-pecuniary interests which relate to the councillor's service on bodies with which the council is associated.

- the requirement that all relevant interests should be declared at meetings. There should be a graded response up to and including withdrawal from the meeting by the councillor where there is a real danger of bias, but in lesser cases it should be possible for a councillor to participate in the meeting and, in some cases, to vote.

19. If a councillor failed to abide by these rules, the Standards Committee would be able to recommend to the full council that the councillor should comply or be disciplined. **Recommendations R8–14 and R17–R18**

Officers

20. We believe it is important to build on the work that has already been done by the Local Government Management Board and individual local authorities in establishing codes of conduct for officers. We considered whether a formal framework similar to that for members was needed but concluded that the way forward was to build on the existing arrangements.

21. One particular area that gave us cause for concern was the potential for improper behaviour if the normal professional relationship between member and officer became unsatisfactory by being either too comfortable or too combative. A number of councils already adopt a formal protocol setting out the relationship between officers and members; we believe that principle should now be extended throughout local government.

22. Clarifying the role of the so-called statutory officers — head of paid service, monitoring officer, finance officer — is particularly important. We therefore recommend that the government should re-examine their roles and should consider extending the statutory protection of chief executives who are threatened with disciplinary action to the monitoring and finance officers. **Recommendations R19–22**

Discipline

23. In our various contacts with councils and in our public hearings we were struck by the difficulty that can be experienced in bringing an errant councillor to book. In the absence of satisfactory disciplinary procedures available to the council itself, the political parties have, to some extent, filled that vacuum. We accept that these party-centred procedures can have a valuable role, but believe the council itself should be able to discipline members. This is the thrust of our recommendations for a Standards Committee coupled with the independent scrutiny of a Local Government Tribunal.

24. We have been persuaded by the evidence put to us by many witnesses that the concept of surcharge of councillors is unsatisfactory. We believe it is particularly unsatisfactory to have a procedure in England and Wales in which the District Auditor formulates and prosecutes a case against individual councillors, judges guilt or innocence, and determines the penalty on the basis of his own calculation of financial loss. We believe

that the concept of surcharge itself is now outdated. It should be abolished and be replaced by the direct involvement of the courts in judging guilt or innocence and the appropriate penalty.

25. We believe that it is important for all holders of public office to be covered by a statutory regime which enables action to be taken in the event of misconduct which is serious, but does not entail bribery or corruption. In this report and in a consultation paper which is being published to coincide with it, we therefore recommend, subject to further consultation, the introduction of a new statutory offence of misuse of public office. This new offence would address one of the great inequalities felt by those in local government as it would apply to all in the public service and not just to councillors and officers. **Recommendations R27–30**

Planning

26. Planning is probably the most contentious matter with which local government deals and is the one on which we have received by far the most submissions from members of the public. Inevitably the planning process produces both winners and losers. The planning process puts elected councillors into the position of taking decisions within a legal framework but also being required to exercise their representative role on behalf of their constituents. Those who lose out frequently put the blame on the process itself.

27. We have no doubt that there have been serious abuses of the planning process: many of these have been the subject of separate inquiries and others were mentioned to us during the course of our public hearings. But we are not convinced that some of the more mechanistic solutions proposed are necessarily the right ones to prevent abuse.

28. Our recommendations on codes of conduct and conflicts of interest will be of particular importance in their application to planning. We also believe that local authorities should examine how their planning processes match up to standards of best practice that we have drawn from a variety of individual councils.

29. There are however some specific areas where action is needed. We believe it is important that members of planning committees should be trained in planning procedures and planning law. We have particular concerns about planning gain and about local authorities granting themselves planning permission; we believe that there are changes which can help to reduce the potential for planning permission being bought or sold; and we believe that there should be greater openness in the planning process. We also believe it important that the relevant Secretary of State should be notified of all planning applications involving the local authority's own property or land which contravene the local plan or excite a substantial body of objections. Consideration can then be given to which applications should be called-in for decision. **Recommendations R34–39**

Other issues

30. We have focused our report on the main areas that have concerned our witnesses and on the areas that we consider have the most significant effect on standards. However, there are some areas not covered above on which we comment. These mainly arise out of different methods of providing public services.

31. We look at the effects of Compulsory Competitive Tendering, Joint Ventures, Management Buy-outs and Local Authority Companies. Broadly we conclude that, provided arrangements for audit are satisfactory, and provided local authorities take proper responsibility for the provision of services by such organisations, it should be possible to tackle issues of standards in these bodies satisfactorily. The two fundamental propositions set out in our second report bear repeating for local authorities (see box).

FUNDAMENTAL PRINCIPLES

'Where a citizen receives a service which is paid for wholly or in part by the taxpayer, then the government or local authority must retain appropriate responsibility for safeguarding the interests of both user and taxpayer regardless of the status of the service provider'

'Central control of autonomous but centrally-funded local bodies should be limited as far as possible to setting policy guidelines and operating boundaries, to ensuring an effective audit framework, and to the effective deployment of sanctions. Government and Parliament should aim to ensure that local mechanisms to influence the activities of local bodies exist, and should give them the support necessary to ensure accountability.'

32. One area which we do not believe is yet sufficiently well developed in local authorities is the handling of internal concerns about standards — whistleblowing. More should done to provide clear routes by which concerns can be raised both by staff working in local authorities and those outside who are providing public services. Similarly we believe it is important that the local authority takes responsibility for handling complaints about its services, whatever organisation is providing those services. The new means of provision of services has resulted in considerable movement of staff from local authorities; rather than formal business appointment rules, we recommend dealing with any risks through the terms of contracts of employment.

33. Becoming a local councillor is now just one of the ways in which individuals can offer themselves for public service. At a local level there is a demand for people to serve on the boards of grant maintained schools, training and enterprise councils and many other bodies. There is a concern in local government that such board members are less constrained in their actions, and subject to fewer sanctions, than councillors and that there should be greater recognition of the democratically elected status of a councillor.

34. We received a number of submissions about the level of allowances, the timing of council meetings, the status of councillors and the willingness of employers to provide time off to attend meetings. While we do not believe there is a prescriptive answer to some of the problems raised by these submissions, we do believe that local authorities could themselves do more to make the working arrangements for members more practicable and should work with employers to remove barriers to becoming a local councillor.
Recommendations R1, R26 and R31–33

Recommendations

R1 Local authorities should re-examine their working methods to identify disincentives which bar particular groups from serving as councillors and, where possible, remove them. They should seek the co-operation of local employers to overcome the obstacles faced by their employees who wish to serve.

R2 The present National Code of Local Government Conduct should be replaced by a statement of the 'General Principles of Conduct for Local Councillors'. This should be a Great Britain document, issued by the Secretaries of State for the Environment, for Scotland, and for Wales, and approved by affirmative resolution of both Houses of Parliament.

R3 The Secretaries of State should take powers to approve 'Model Codes of Conduct for Local Councillors' prepared by the local government associations and ombudsmen, provided that any Model Code which is approved incorporates and reflects the 'General Principles'.

R4 Each local authority should be required to adopt a local code of conduct which incorporates and reflects the 'General Principles' and achieves at least the same effect as the approved model code.

R5 Every new councillor, and every councillor on re-election, should be required to state that they had read, understood and would observe their local code.

R6 The appropriate Secretary of State should be able to make a formal request to a local authority that it should make changes in its local code or standing orders if he or she considers that it does not achieve at least the same effect as the model code. If the local authority does not comply, the Secretary of State should be able to refer the code to the relevant Local Government Tribunal (see R24), which would have the power to order changes.

R7 The Commissioner for Local Administration (the local ombudsman) should be able to recommend changes to a local authority's code, and if necessary refer the matter to the relevant Local Government Tribunal for a final decision.

R8 Every council should have to maintain a public register of councillors' interests, listing their pecuniary interests; those non-pecuniary interests which relate closely to the activities of the council and associated bodies, or which members of the public might reasonably think could influence a councillor's judgement; and pecuniary interests of close family members and people living in the same household as the councillor.

R9 It should no longer be a criminal offence to fail to register a pecuniary interest.

R10 Unless they have a dispensation, councillors who have a direct pecuniary interest in a matter under consideration should have to declare that interest, withdraw from the meeting or discussion, and take no further part in the business in question.

R11 Councillors should have to declare any interest which is not of a pecuniary kind, and which members of the public could reasonably think could influence their actions, speeches or votes.

R12 Unless they have a dispensation, councillors should withdraw from consideration of matters where they have an interest whose existence creates a real danger of bias, that is where they or their close family are likely to be affected more than the generality of those affected by the decision in question.

R13 All the existing primary legislation on conflicts of interest in local government should be repealed and be replaced by a provision giving effect to the common law principles set out above.

R14 Regulations under the statute should be confined to requiring councils to have public registers of interests, to setting out the framework of interests which must be included in those registers, and to requiring councils to have rules covering declaration, withdrawal, and disciplinary procedures.

R15 Councils should set up a Standards Committee, composed of senior councillors, which should have the power to examine allegations of misconduct by councillors and to recommend disciplinary action to the full council, including the punishment of an individual councillor.

R16 A meeting of the full council (open to the public and press) to consider a report of the Standards Committee should be held as soon as possible after the Standards Committee has reported.

R17 The Standards Committee should have powers to propose the withdrawal from decisions of a member whose interests it considers are such as to create a real danger of bias, and to recommend disciplinary action against members who breach the council's code.

R18 The Commissioner for Local Administration in England should cease to issue general guidance about conflicts of interest.

R19 Every local authority should be required to draw up a code of conduct for officers (based either on the LGMB model or a locally-drafted version) incorporating rules for the registration and declaration of interests by officers similar to those we recommend for councillors.

R20 Every local authority should have its own written statement or protocol, governing relations between members and officers.

R21 The statutory powers of the head of paid service, monitoring officer, and chief financial officer should be reviewed by the Department of the Environment (and the Scottish and Welsh Offices) to determine whether they are workable and effective.

R22 The protection already available to chief executives who are threatened with disciplinary action should be extended to the council's monitoring and chief financial officers, subject to the findings of the review proposed in R21.

R23 The Standards Committee should be able to recommend the suspension of councillors for up to three months, as well as the imposition of lesser penalties.

R24 There should be Local Government Tribunals in England, Scotland, and Wales with the power to hear appeals from councillors who have been subject to a penalty imposed by a council; and to require an authority to alter its Code of Conduct, standing orders, and other procedures when necessary.

R25 The Local Government Tribunals should hear appeals from councillors against disciplinary action by their councils following a recommendation of the Standards Committee; and should have the power to disqualify councillors from office.

R26 Every local authority should institute a procedure for whistleblowing, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation. The Standards Committee might well provide an internal destination for such complaints.

R27 Surcharge should be abolished and, pending the introduction of a new statutory offence of misuse of public office (R28), replaced with a procedure in which the auditor applies to the courts for a ruling, and the court has the power to order compensation and/or impose disqualification from office.

R28 Subject to further consultation, there should be a new statutory offence of misuse of public office, which would apply to all holders of public office.

R29 The District Auditor's 'stop' power in England and Wales should be discontinued and replaced with a system of formal warning notices.

R30 The right of a local elector to challenge an authority's accounts should be recast to avoid abuse of the process.

R31 Local authorities should ensure that people who receive services through a contractor to the local authority have access to a properly publicised complaints system.

R32 Staff of contracting organisations should have access to the local authority's whistleblowing procedures.

R33 Local authorities, which are concerned about conflicts of interest when staff move to the private sector, should consider the introduction of restrictive covenants or stipulations in the contracting process, to avoid conflicts of interest.

R34 All members of an authority's planning committee (or equivalent) should, receive training in the planning system, either before serving on the committee, or as soon as possible after appointment to the committee.

R35 Planning committees should consider whether their procedures are in accordance with best practice, and adapt their procedures if necessary, setting them out in a code accessible to councillors, staff, and members of the public.

R36 The Department of the Environment (and the Scottish and Welsh Offices) should consider whether present legislation on planning obligations is sufficiently tightly worded to prevent planning permissions from being bought and sold. The Departments should continue to reduce the time taken for planning appeals to be arranged and should set demanding targets to that end.

R37 Local authorities should adopt rules on openness that allow planning agreements to be subject to discussion by members of the authority and the public. They should not restrict access to supporting documents except where justified by the requirements of commercial confidentiality, which should be interpreted narrowly.

R38 The Government should require authorities to notify the appropriate Secretary of State of all planning applications in which they have an interest, either in the development or in the land, either where the proposed development is contrary to the local plan, or has given rise to a level of objections regarded by the appropriate Secretary of State as substantial.

R39 The Government should be more ready to use its powers to call in all major planning applications handled by an authority where, over a period of time, there is substantial public concern about that authority's decision-making procedures.

Chapter 2

The Local Councillor

> *'A broad range of experience is as important in a local council chamber as it is in Parliament.' Andy Myles, Chief Executive, Scottish Liberal Democrats*
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> *'I want local government to be filled with people who have a great deal of local interests and they must be the butcher, the baker, and the candlestick maker — every kind of profession including farmers — as well as the local trades union member' Rt Hon John Gummer MP, Secretary of State for the Environment*

35. In our first report we dealt with the standards of conduct of Members of Parliament. Local authority councillors are the other group of people in public life whose accountability derives from the ballot box. In other respects their roles may be very different, but we believe that democratic election gives local councillors, like Members of Parliament, a special status in public life. It places on them also a responsibility to set an example for public service as a whole and for local government in particular.

Serving as a Councillor

36. Although councillors are elected, they fulfil an executive role which is wholly constrained by statute. At least constitutionally, they have no broader discretion by virtue of their being elected. This can be a source of tension in local government and in relations between central and local government. Some have suggested that these difficulties could be eased by creating a greater degree of constitutional legitimacy for local councillors, by virtue of their elected status. This might allow them more local discretion about the nature and extent of their role without the constant risk of falling foul of the doctrine of *ultra vires* (decisions falling outside the legal competence of those making them), or at the very least give them a broad, discretionary spending power.

37. These are subjects well worth exploration, but we have to consider the arrangements which we find. There are two points which we must note. First, local accountability is best achieved locally. An excessive degree of central control diminishes accountability, especially since Parliament is not well placed to exercise control over the executive in respect of local matters.

38. Second, as a recent House of Lords report put it, 'it is clear that relations [between central and local government] were until the last two or three years very bad'. The then Government, in its response, did not disagree.[1]

39. This history of bad relations may be one reason why it appears that many of the present arrangements for maintaining standards of conduct are founded on the presumption that if elected local politicians are not constrained either by their officers or

1. Rebuilding Trust, House of Lords 97, July 1996, page 50, paragraph 6.7. The Government's Response, Cm 3464, November 1996

'Sadly, what we tend to see, and I am sure you are aware, is that people who become councillors are usually either retired, unemployed against their will, or the spouses of rich husbands or wives whom they can rely on to support them'. ***David Rendel MP, Spokesperson on Local Government, Liberal Democrat Party***

'The vast majority of councillors in England are volunteers who commit substantial resources of time and skills to serve the interests of their communities. For many, the consequence of this commitment is disruption to family and working life'. ***Irene Henderson, Leader, Liberal Democrat Group, Milton Keynes Council***

'I accept that the general quality of councillors is variable and in some cases just plain poor, but we will never get the best quality over all whilst we continue to make it financially impossible for people to serve during the main earning years of their lives. That we get some good people now is due almost entirely to the commitment or folly of those who serve.' ***Michael Cowan, former leader, Newark District Council***

44. It is no easy task being a local councillor in the 1990s. Councillors whom we met, or who sent in or gave evidence, spoke of their heavy workload, long hours, and inadequate financial compensation. In some authorities — although not all, by any means — we were told that only the retired, the unemployed, and those of independent means could find the time to serve effectively as a councillor. The incompatibility of serving as a councillor while holding down a full-time job was particularly true of members who exercised specific responsibilities, such as committee chair or leader.

45. The Audit Commission has been active in encouraging councils to adopt different working methods which might enable more sorts of people to serve[2]. There is not a simple solution, however. Evening meetings may suit those in full-time employment but discourage people with young families. Reducing the workload of the individual councillor may mean in practice less 'social work' or fewer contributions to the transaction of council business. That approach may remove the councillor's reasons for serving on the authority in the first place.

46. The relatively narrow range of people who find it easy to serve on authorities is disturbing, however, because a council should ideally be a fair reflection of the communities it serves. Various solutions were suggested to us: increased allowances; compensation for employers who released staff; better facilities to enable councillors to juggle work and council life, and so on.

47. Certainly no councillor would seek election in order to get rich. Although the allowances paid to the leaders of large authorities may in a few cases appear generous (five were paid over £22,000 in 1996–97), they are in no sense commensurate with the size of the council's budget or the responsibilities attached to the post. Allowances for 'backbench' councillors or members of smaller authorities may be modest in the extreme. A basic allowance of £431 in Tamworth Borough Council, with an attendance allowance of £23.22 per meeting, is not untypical. Some leaders of councils receive little more than £1000 a year in allowances.

2. See especially 'Representing the People: the Role of Councillors', Audit Commission management paper, 1997.

by some other outside body they will act irresponsibly. A particular problem is that key responsibilities for maintaining standards are often placed outside councils, when accountability would be better served if the emphasis was on internal controls and responsibility supported by external scrutiny.

40. A suspicious attitude on the part of central government towards local government tends to damage the structure of public life and to reinforce public disenchantment with all democratic institutions. It is not compatible with the approach which we have taken towards Parliament, where we have tried to avoid creating a situation in which appointed officials, or judges, take precedence over democratically elected representatives. A lack of trust, or an assumption of irresponsibility, is not compatible with the linkage between responsibility and accountability which is the essence of good governance. There is some reason to believe that this may be one of the factors which discourages people from service as councillors, so that there is a self-fulfilling element in the approach.

41. There is now a general acceptance that relationships between central and local government are improving, and this has encouraged us in the recommendations we make. We believe it is particularly important to encourage an attitude of mind among those who are charged with drawing up legislation and regulations, in which they start from the assumption that public bodies should take prime responsibility for their own standards of conduct within an overall framework, but should be subject to effective external scrutiny. A time of improving relationships is the right time to make such a change.

42. However there are difficulties in dealing with elected representatives which will continue to exist whether or not they are given greater discretion and responsibility. These derive from the nature of the democratic process itself. The nature of election means that councillors are not professional public service managers, and may well serve for only a short time, either through choice or as a result of election defeat. It is often argued that the inexperience and short tenure of councillors makes it especially necessary to give the professional officers safeguards and reserve powers in order to provide greater consistency in decision-making and the conduct of business. At the other extreme, it is argued that, where there is a long-term and overwhelming majority for a single political party, councillors are not subject to the full pressures of the democratic process, serve for too long without real accountability, and either enjoy excessively close relationships with senior officers or exercise too much authority over them.

43. There is some truth in each of these arguments. They apply with more force in local government than in central government, because in principle (if not always in practice) all local councillors form part of the executive, while only a minority of MPs do. But they do not detract from the general principle that the basis of any system of good governance must be for the primary responsibility to be given to those in charge of the organisation itself, with appropriate safeguards by way of external scrutiny and appeal mechanisms to enable action to be taken if and when internal mechanisms prove insufficient. Our recommendations adopt this general approach.

48. Responsibility for setting the rate of allowances was devolved to authorities by the Government in 1995, subject to rules which defined various types of allowance. There is a basic allowance, which must be the same for all councillors who claim it; an optional 'special responsibility payment' for specific offices; and an attendance allowance, also optional, for attending council meetings and committees. It is up to each authority to combine these according to taste, although the overall scheme must be reviewed annually and published. The Scottish system retains an element of control by the Secretary of State, but this does not apply to special responsibility allowances. The principle is that councillors should not suffer financial hardship as a result of being elected. In the case of some of the smaller sums involved, it is difficult to believe that this is being achieved.

49. Although local government had campaigned before 1995 for more discretion over allowances, we found that there seems to be widespread distaste on the part of authorities for the task in practice, as it carries with it the unattractive choice between public opprobrium or poverty. Whilst we appreciate the awkwardness of councillors, like Members of Parliament, having to set 'rates of pay' for themselves, no national scheme is likely to be able to reflect the circumstances and working arrangements of each and every authority. Those councils which have set up panels of outsiders to advise them on the appropriate level of allowances have been both fiscally and politically prudent.

50. We have no views on the rates of allowances as such, although we are concerned about any aspect of council life which makes it more difficult for councillors to be reasonably representative of the communities they serve. A substantial increase in allowances would not of itself solve the problem of attracting new and different groups of people to serve on their councils, even if it were financially and politically possible. Time, and the goodwill of employers, are far more important.

51. Some evidence we received suggested that employers were inclined to take a much less positive view of employees who wanted to take time off for council business than of those, for example, who were involved in the voluntary and charitable sector. Whatever the reasons for this, it is a great pity, because councils can play an immensely constructive role in the community, bringing together the whole range of organisations and companies which are active locally and giving much additional value to the efforts of charities, employers, and local public bodies. The way in which local authorities have done this may have changed over the past century, but the ambition to serve on a council remains an honourable calling and should be recognised as such.

52. It is thus essential that each authority tailors its working arrangements so that access to council office is made practicable for as many of those who wish to serve as possible. Central advice on this must however be realistic. Councillors commonly seek office to run things and to help their constituents; not to 'exercise strategic direction' or 'hold officers to account', or any of the other fashionable statements of purpose. Proposed new methods of working will not make progress if they fly in the face of local experience. That is not, however, a justification for those authorities which persist in overloading their councillors with the minutiae of decision-making, best delegated to officers. There is a middle course to be steered between excluding councillors from the detail and drowning them in it.

R1 Local authorities should re-examine their working methods to identify disincentives which bar particular groups from serving as councillors and, where possible, remove them. They should seek the co-operation of local employers to overcome the obstacles faced by their employees who wish to serve.

The National Code of Local Government Conduct

53. Local government has been subject to a number of incidents of corruption, nepotism, or favouritism since the war. One of the most famous and far-reaching cases of corruption in public life this century, the Poulson scandal, primarily involved local government. Its consequences have continued to affect local government ever since, because it led directly to the creation of two Royal Commissions, under Lord Salmon and Lord Redcliffe-Maud[3], and thence to the introduction of a national code for local authorities called (slightly misleadingly, as it applies only to councillors) 'The National Code of Local Government Conduct'.

'There is equally no doubt, in our minds at least, that the principles of conduct have to be the same north and south of the border. Probity is not one thing in Edinburgh and another elsewhere. We would be clear that we want the same principles and basic minimum standards of conduct to apply throughout Britain.' Jim Gallagher, Assistant Secretary, The Scottish Office

'My own feeling is that there certainly needs to be a national code dealing with basic principles. The public would find it hard to understand that local authorities could be entirely self-policing in these matters, both in terms of devising their code and in terms of them regulating it. The public expect that there are certain basic national standards which should apply. Below those national standards there is clearly a strong case for saying that codes often work best if the organisation feels that it has ownership of that code and that it has developed from debate within the organisation, which is all well and good." Alan Pike, Local Government Correspondent, Financial Times

'The more you focus responsibility on the authority itself, rather than allowing it to be propped up from outside, the more likely you are to get that authority owning what it should be doing.' John Scotford, President, CIPFA and County Treasurer, Hampshire County Council

As a principle, we would be in favour of allowing local authorities, or indeed encouraging them, to apply particular rules and processes more stringently at a local level, provided you have the clear national framework, which is, if you like, the minimum from which people start.' Peter Wilkinson, Director of Corporate Resources, Audit Commission

'... there needs to be a set of general principles which can be clearly enunciated to which people can work and which people understand. That is not the case at present.' Tim Harrison, County Secretary, Leicestershire County Council

'I think the councillors really are entitled to say that they would like one clear document, accepting that there will be circumstances that are not covered by that one clear document. Officialdom should make a better effort. I agree that you cannot achieve total clarity but we owe councillors of all political persuasions a better effort than we have at present.' Frank Dobson MP, Spokesperson on the Environment and London, Labour Party

3. 'Report of the Royal Commission on Standards of Conduct in Public Life', Cm 6524, July 1976; and 'Report of the Prime Minister's Committee on Local Government Rules of Conduct', Cm 5636, May 1974.

'Many of the restrictions currently inhibiting local government were an across the board response by Central Government to control the activities of a small minority of local authorities and have left a legacy of inflexibility to adopt procedures and practices to reflect local circumstances and conditions.' Helen B Sutherland, Clerk and Solicitor, Guildford Borough Council

54. During our study, scarcely anyone had a good word to say about the present national code. As a Committee, we have encouraged the introduction of codes in public life, but we agree with the criticisms which have been made. This might seem surprising, until one compares the best practice which we have proposed in our earlier reports for other parts of the public sector, with the way in which the national code operates in local government.

55. The best practice which we have recommended in previous studies includes the following important elements:

- codes should be short, clear, statements of principles, not rule books;
- the organisation within which a code operates should have an important role in revising it, or adapting a model to its own needs;
- sanctions should be clear, appropriate, and consistent;
- there should be a firm commitment to educating and training people in the code so that they understand why it is there, as well as what it says.

56. The present practice in local government bears little or no resemblance to this model. The national code is admitted by all to be a complicated document on which the advice of an experienced officer is usually necessary; the regime it imposes for handling conflicts of interest is impenetrable; the penalties for non-compliance are inconsistent, sometimes statutory, sometimes not; and the whole system is controlled centrally. It represents something that is 'done to' local authorities, rather than 'done with' them.

57. We believe that a much more effective model for maintaining standards of conduct would be a system based around a simple statement of principles of local government approved centrally, and expanded in detail by local authorities themselves, both through their representative organisations and individually. Our recommendations couple this with a tough but rational regulatory regime (see chapter 4, 'The Enforcement of Standards') designed to punish the minority — whether authorities or individuals — who flout standards.

The Present Position

58. Under the present system, the Secretary of State for the Environment, and the Scottish and Welsh Secretaries of State, have the right to issue and revise a code for local government after consultation with the appropriate local authority representatives and approval by resolution of both Houses of Parliament.

59. The text of the current code is given in Appendix 1. It is not a very satisfactory or helpful document. As the Department of the Environment acknowledged, 'there is evidence that councillors are at times unclear about the specific requirements which apply to them'. The code contains a few important principles of local government which belong in such a document, although not enough. These are coupled with some nannying ('working lunches may be a proper way of doing business'), frequently covering matters that should be decided, at least in detail, locally. The attitude of the local government associations was that the code therefore needed 'substantial review'.

60. The most frustrating section of the present code, however, is undoubtedly that dealing with conflicts of interest and how to handle them. The code is extremely specific and complex in this area, but leaves a good deal to turn on the councillor's subjective interpretation of certain key phrases (see pages 24–35).

61. As our witnesses and correspondents told us, the vast majority of councillors lacked the specialist knowledge to navigate their way around the labyrinth of the code and its statutory underpinning. They depended on the advice of officers, who were themselves not always sure of their ground. Paradoxically, the final responsibility for declaration or non-declaration lies with councillors, who accept office with the statement they will be 'guided' by the national code. It is not satisfactory to have people in public life being 'guided' by a document which they do not fully understand. Guided how? And to where?

A New System of Conduct for Councillors

62. Replacing the present code seems to us to be the essential first step in ensuring that standards of conduct in local government are maintained. We have tried to achieve three main aims:

63. **First**, there is a need to ensure that the proper balance is achieved between what must be decided nationally (and by whom) and what is best handled locally. We have rejected the option of simply redrafting the present code to make it easier to use, while leaving the mechanics of the system unchanged. Some aspects of local government conduct are integral to the proper function of any local authority, and the public has the right to expect that all councillors and officers will observe them. Those aspects should therefore be approved on a national basis. Yet a single national code cannot hope to cope with the diversity and change of local government, so there must be room for differences of detail and emphasis, and the flexibility to draw up new rules to cover new problems and new situations. We are also concerned that codes should be owned by the organisations that operate them, not imposed from above: because only then will a code be truly effective. The lead in drawing up detailed codes should therefore be taken by local government itself.

64. **Second**, the confused and confusing system which at present governs conflicts of interest must be cleared up. At the moment the system is focused on **what** has to be declared, whether orally or in a register. We propose a move towards a system of declaration which concentrates on **outcomes**, ie the consequences of breaching the rules.

65. **Third**, we wish to see a system which helps to protect and enhance the public reputation of local government. We believe that local councillors, officers, and members of the public should be able to have access to a single document which specifies the detailed rules of conduct for councillors in their authority in a clear and straightforward way. There must also be a mechanism for ensuring that any code is subject to review and challenge, which we deal with in chapter 4.

66. The box below sets out how we envisage these aims being achieved.

A NEW STRUCTURE FOR THE CONDUCT OF LOCAL COUNCILLORS

A statement of the '*General Principles of Conduct for Local Councillors*' would be issued by the Secretaries of State for the Environment, Scotland and Wales, and approved by affirmative resolution of both Houses of Parliament.

The Local Government Association, with the help of the local government ombudsman, would work up a model detailed code, the '*Model Code of Conduct for Local Councillors*', including and reflecting the *General Principles*.

A similar process would take place in Scotland under the aegis of the Convention of Scottish Local Authorities to produce a model Scottish code, and in Wales through the Welsh Local Government Association.

The Secretaries of State concerned would approve these codes, provided they were satisfied that they reflected the *General Principles*, and submit them to Parliament for endorsement.

Each local authority would be required to have a local code reflecting the approach of the appropriate *Model Code*. An authority could use the approved model version verbatim, or write its own, provided the local code achieved at least the same effect.

Councillors would have to state on election and re-election that they had read, understood, and would observe their local code.

All local codes would be subject to independent scrutiny by a new local government Tribunal to ensure that they were in accordance with the General Principles and the *Model Code*.

There would be reserve powers for the Secretaries of State and the local government ombudsman to request a local authority to modify its code to accord with the *General Principles and Model Code*, and ultimately to refer the text of a local code for examination to the Local Government Tribunal, which would have the power to compel changes (see Chapter 4).

67. At first sight this may seem a complex structure. It is not. The key is the perspective of the most important individuals involved in the process: local councillors and their electors. Instead of a national code which is a confusing mixture of detail, generalisation, and examples, and which has to be supplemented by a wide variety of local and national explanation and guidance, councillors and constituents will have in front of them a single document, their local code, closely tailored to the practices of the authority in which they serve or live; drafted by their own officers who are on the spot to explain any difficulties; and subject to regular review and approval by the members themselves.

68. There are of course limits to the degree of local autonomy that is appropriate for matters of conduct. All councillors in England, Scotland, and Wales should operate according to the same basic principles reflecting their place in public life and their duty to their electorates; the 'General Principles of Conduct for Local Councillors'. To reflect the importance of those general principles, we believe that as with the present arrangements, the Secretaries of State should produce a document relating to local government conduct accompanied by those principles which are approved by both Houses of Parliament. At a national level, this will provide a framework within which the detail can be added by those who have to administer and regulate the system. We have provided a first draft of the principles in the box below.

THE GENERAL PRINCIPLES OF CONDUCT FOR LOCAL COUNCILLORS

These principles should guide the conduct of elected members of local authorities in England, Scotland, and Wales. They have been approved by resolution of both Houses of Parliament and are issued under the authority of the Secretary of State for the Environment, the Secretary of State for Scotland, and the Secretary of State for Wales.

IF YOU ARE A LOCAL COUNCILLOR:

You should familiarise yourself with these principles and the code for councillors issued by your authority. It is your responsibility to make sure that what you do complies with those documents.

You should conduct yourself in compliance with the seven principles of public life set out below.

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.

You have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in you, and in such a way as to preserve public confidence in your authority.

You have a general duty to act in the interests of your authority as a whole and the local community it represents; and a special duty to your constituents.

As well as avoiding actual impropriety, you should avoid any appearance of improper behaviour.

Where you have private interests which conflict with your public duty you must resolve this conflict in favour of the public interest.

You should make relevant declarations of interest during informal contacts, meetings of your political party, meetings of the council, its committee and working groups, and in all circumstances where you are active in your role as a member.

You should respect the role of the authority's officers and treat them with courtesy at all times.

When making appointments, awarding contracts, or transacting other business, you should ensure that your decisions are made solely on merit.

You should ensure that confidential material, including material about individuals, is handled in accordance with the rules laid down by your authority.

You should avoid accepting gifts and hospitality that might reasonably be thought to influence your judgement.

69. By themselves, the principles would be insufficient as a guide to councillors. We therefore recommend that a duty be placed on **each local authority** to draw up a code which satisfies the principles of local government conduct. This will have three advantages over the present system:

- it will encourage those in the authority itself, whether councillors or officers, to take responsibility for their standards of conduct;
- it will allow the local code to be adapted to meet local circumstances;
- it will allow the local code to be adapted if new questions of conduct arise.

70. It would not, however, be sensible to leave each local authority to work on this in isolation. The collective wisdom of those who have overall responsibility for local government in the wider context of public life (central government); those who represent local government as a whole (the local government associations in England, Wales, and Scotland); and those who deal with cases of maladministration in local government (the local government ombudsmen) must be employed. We therefore propose that they should join forces to prepare a model code (or needed to reflect territorial differences, model codes) which reflect and include the general principles approved by Parliament. Once the Secretaries of State are content with the model code(s), they should seek approval of them by Parliament.

71. Each local authority should have a duty either to adopt the model code as it stands, or to devise their own version, so long as their own code achieves at least the same effect as the model code. In other words, a local authority's code could never be less stringent in its approach than the model code: but it might introduce tighter rules if desired.

Statement of Compliance

72. We believe that the present statement by a councillor on taking office, that he or she will be guided by the National Code, is inadequate. The formulation, that the councillor had 'read, understood, and would observe' their authority's code should replace it. We believe that it will be possible to produce local codes, based on the models, which are simpler to use than the present version, but there will always be areas subject to interpretation. It is thus essential that councils provide proper training, both for existing and new councillors, on the standards of conduct which they are expected to observe.

73. It might be helpful to give examples of how the new arrangement would work in practice. Take, for example, rules on the acceptance of gifts and hospitality. The general principles might contain, as in our draft, a statement that a councillor 'should avoid accepting gifts and hospitality that might reasonably be thought to influence your judgement'. The model codes would supplement that statement with detail, for example by specifying that gifts and hospitality above a certain value should not be accepted, and that anything accepted while on council business should be declared in some form. The authority's local code could not introduce rules which were **less** stringent than those in the model code. It could, however, include additional rules or advice to reflect local

circumstances. An authority might require all gifts and hospitality to be refused; or to register acceptance in a particular form; or the local code might include examples of hospitality which had caused criticism in the past and should never be accepted. Including this sort of material would be a local decision.

74. We can contrast this approach with the rules on conflicts of interest. Again, the general principles offer the underlying basis for the system: 'Where you have private interests which conflict with your public duty you must resolve this conflict in favour of the public interest.'

75. There should however be no scope for local variation in the declaration and handling of conflicts of interest. The principle of avoiding conflict between public and private interests is fundamental to public life in this country and to public confidence in standards of conduct. We have suggested a new approach below (pages 24–35): we hope that it, or something like it, will be set out in the model codes in full, and incorporated in every local code.

76. With that exception, where we believe a radically new approach is needed, we have not attempted to draft the model code ourselves: that is a task for experts in local government.

R2 The present National Code of Local Government Conduct should be replaced by a statement of the 'General Principles of Conduct for Local Councillors'. This should be a Great Britain document, issued by the Secretaries of State for the Environment, Scotland, and Wales, and approved by affirmative resolution of both Houses of Parliament.

R3 The Secretaries of State should take powers to approve 'Model Codes of Conduct for Local Councillors' prepared by the local government associations and ombudsmen, provided that any Model Code which is approved incorporates and reflects the 'General Principles'.

R4 Each local authority should be required to adopt a local code of conduct which incorporates and reflects the 'General Principles' and achieves at least the same effect as the approved model code.

R5 Every new councillor, and every councillor on re-election, should be required to state that they had read, understood and would observe their local code.

R6 The appropriate Secretary of State should be able to make a formal request to a local authority that it should make changes in its local code or standing orders if he or she considers that it does not achieve at least the same effect as the model code. If the local authority does not comply, the Secretary of State should be able to refer the code to the relevant Local Government Tribunal, which would have the power to order changes (see chapter 4 and R24).

R7 The Commissioner for Local Administration (the local ombudsman) should be able to recommend changes to a local authority's code, and if necessary refer the matter to the relevant Local Government Tribunal for a final decision.

'If we are trying to encourage people who are active in their locality to take part in politics at a council level it would be unfortunate if we were to have rules which made them feel that their influence might be diminished by becoming a councillor.' ***Frank Dobson MP, Spokesperson on the Environment and London, Labour Party***

'When I was at Southwark we tried to produce a comprehensive note on members' interests for the guidance of members and we did produce the note but the note was thirty pages long.' ***Clive Grace, Chief Executive, Torfaen County Borough Council***

'Certainly, the impression we have ... is that the present situation creates difficulties for individual councillors, that the existing rules are perhaps quite confusing and difficult for them to operate.' ***Jon Shortridge, Under Secretary, Welsh Office***

'... the present system has reached a stage of complexity where most of us have almost given up trying to work out what a member of the public might think about whether we had been influenced or not .... Most of us now are just saying, "I think we might have a non-pecuniary interest and we are leaving the room".' ***Geoffrey Wombwell, Leader of the Conservative Group, London Borough of Hammersmith & Fulham***

'Wittgenstein himself would have been taxed to elucidate the distinction drawn [in the Code] between interests that are insignificant; interests that are significant but not clear and substantial: and interests that are both significant and also clear and substantial'. ***Editorial, Local Authority Law, 3/95.***

Conflicts of Interest

77. The resolution of conflicts of interest is at the heart of probity in public life. All of the seven principles of public life come together on this one issue. Getting it right is fundamental.

78. The central principles are clear. A person in public office must not take any decision in pursuit of a private interest, and must not allow any private interest to influence a public decision. Any relevant private interest must be declared, and if the conflict of interest is too great then the person concerned must either stand aside from the decision in question, or dispose of the private interest.

79. The practice is much more difficult. Everyone in public office has some private interests. Those who are in public life on a part-time or voluntary basis, like local councillors, will certainly have extensive private interests and may well have a wider range of such interests than the average member of the public.

80. It is not possible or desirable to say that no-one with any relevant private interest whatsoever should participate in a public decision. Such a position would mean that people with relevant knowledge and experience were excluded, and the quality of decision-making would suffer.

81. There are circumstances where a person with a private interest should always withdraw. The existence of a **pecuniary interest** is such a circumstance. But there are circumstances where the existence of a **non-pecuniary interest** is not a sufficient reason for not participating, and some circumstances where it is positively desirable for people to take part and vote on a subject in which they have a non-pecuniary interest.

82. The issues are particularly complex in local government. Local authorities are multi-purpose bodies, involved in many different activities within a restricted geographical area. They are run by councillors, elected on a ward basis, whose task is to represent the interests of local people. Councillors are themselves local people, who are likely to have been actively involved in the local community before election, both in commercial and non-commercial activities, and who may be even more involved after election. Potential conflicts of interest are likely to occur frequently, and the public interest requires that a sensible balance should be struck between avoiding impropriety, and enabling councillors to fulfil the role for which they were elected.

The Present Situation : Registration

83. Statutory registers of interests apply to elected councillors, although not to parish councillors, co-opted members of council committees, or officers. Separate registers do not have to be kept by joint bodies on which councillors serve.

84. The register relates only to **pecuniary interests**. The government rejected, on the grounds that such a requirement would be unreasonable, a recommendation by the Widdicombe Committee[4] that the register should cover all interests, whether pecuniary or not, which could reasonably be regarded as likely to affect a councillor's conduct or to influence his or her actions, speeches or votes.

85. The register must be available on paper during office hours for public inspection. It is a criminal offence not to register the prescribed pecuniary interests, or to give false or misleading information. Changes must be registered within a month. Registers cover only the councillor's own interests, not those of a spouse or any other person. Councillors cannot be obliged to register any interests other than those which they are required by statute to register.

86. The regulations require the registration of pecuniary interests under these headings: employment, office, trade, profession or vocation; sponsorship; contracts with the authority; land in the authority's area; licences to occupy land (eg shooting or fishing rights); tenancies of local authority property; interests in securities in bodies which have a place of business or own land in the authority's area (but excluding shareholdings with a nominal value of less than £25,000 or constituting less than 1% of the issued share capital).

87. Councils may have additional voluntary registers covering non-pecuniary interests, and the pecuniary interests of spouses and close family members, but councillors cannot be required to complete these. Co-opted members of council committees are not required to register their interests. Councillors who serve on joint boards are not required to register their interests with the secretariat of such bodies, as the entry on the register of

4. 'The Conduct of Local Authority Business', Cm 9797, June 1986, paragraph 6.56.

the council is deemed to be sufficient. However a councillor who was appointed to represent the council on the board of an external body, which required its board members to make an entry in its register of interests, would have to comply with the rules of that body.

Registration in Non-departmental Public Bodies (Quangos)

88. In 1997 the Government issued new 'Guidance on Codes of Practice for Board Members of Public Bodies'[5]. The guidance requires each public body to keep a register of interests appropriate to the body's activities. It says:

> *'The register should, as a minimum, list direct or indirect pecuniary interests which members of the public might reasonably think could influence judgement. Boards should also consider whether registers of interests should also include non-pecuniary interests of members which relate closely to the body's activities, and interests of close family members and persons living in the same household as the board member.' (paragraph 17).*

89. The guidance notes that non-pecuniary interests include those arising from membership of clubs and other organisations, and that close family members include personal partners, parents, children (adult and minor), brothers, sisters, and the personal partners of any of these.

90. There are no specific sanctions against failure by board members of public bodies to comply with requirements to register, although individual public bodies may well build these into their own rules. Board members on appointment must undertake to comply at all times with the body's code of conduct. The general sanction is expressed in these terms:

> *'The arrangements for appointing board members normally make it possible to remove them from office if they fail to perform the duties required of board members to the standards expected of persons who hold public office.' (paragraph 15).*

Registration in the House of Commons

91. The defining purpose of the Register of Members Interests for Members of the House of Commons is this:

> *'to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament.'*[6]

92. Members of Parliament are asked to keep that overall purpose in mind when registering their interests. Interests are registered under these categories: remunerated directorships; remunerated employment, office or profession; clients; sponsorship or financial or material support; gifts, benefits or hospitality received in the UK (with a declaration threshold of £125 for gifts or £215 for hospitality); overseas visits (not paid for

5. 'The Governance of Public Bodies: A Progress Report', Cm 3557, February 1997. The guidance is at annex C.
6. As quoted in the current 'Register of Members' Interests', House of Commons 259, February 1997.

personally or from UK public funds); overseas benefits and gifts; land and property (excluding personal residences); registrable shareholdings (with the same thresholds as local government, but including those of the spouse or dependent children).

93. There is also a discretionary section for Members to register 'interests, including unremunerated interests, which do not clearly fall within any of the specific categories but which they consider to be relevant to the definition of the Register's purpose.'

94. Failure to disclose interests in accordance with the rules of the House is a disciplinary matter, to be investigated (and often dealt with) by the Parliamentary Commissioner for Standards, and in more serious cases for adjudication by the Committee on Standards and Privileges and ultimately by the House itself.

A New System of Registration in Local Government

95. The requirements on registers of interests in local government are not consistent with current good practice, and should be reviewed.

96. We do not believe that the tight statutory restraints on the information which should be registered operate in the public interest. The purpose of registers is to make the public, officers, and fellow councillors aware, in a timely fashion, of interests held by councillors which are likely to give rise to conflicts of interest. A register is an important supplement to a declaration of interest, because it is a standing document, which can be consulted when or before an issue arises, and enables others to take a view on whether a conflict of interest may exist.

97. As such, it is an important safeguard for councillors themselves. The responsibility for deciding whether an interest should be registered, and subsequently declared in relation to a particular item of business, lies with the individual councillor. It can often be helpful, however, for a councillor to know in good time if others might consider that a conflict arises. It is also important for public confidence that people who are interested in the council's business, for whatever reason, should be in a position to know in advance of a particular meeting that an interest might have to be declared by a particular councillor.

98. In our view the defining purpose of council registers should be to enable councillors to register any pecuniary interests, and any other interests which members of the public might reasonably think could influence their actions, speeches or votes in the council. This approach is in line with the approach taken by non-departmental public bodies and the House of Commons, and as recommended by the Widdicombe Committee for local government.

99. Within such a general objective, councillors should be obliged to register pecuniary interests, including pecuniary interests of spouses and of dependent children or other persons forming part of the same household. They should be asked to register non-pecuniary interests which members of the public might reasonably think could influence their actions, speeches or votes in the council, but it should be for councillors' own judgement as to what non-pecuniary interests fit that criterion.

100. Because a council's business covers such a wide range of activity, it will not generally be possible for a councillor to be sure that a non-pecuniary interest will never give rise to a potential conflict with the council's activities. It would not be reasonable or practicable therefore to expect that all non-pecuniary interests which might conceivably give rise to a conflict will be registered. Councillors should have the defining purpose of the register clearly explained to them, and should then use their own judgement as to what non-pecuniary interests are both continuing interests, and sufficiently close to the council's business, to justify registration rather than declaration on a particular occasion. Membership of local clubs and voluntary bodies, particularly when the councillor serves on the management committee, is something which it might be particularly appropriate to register, as is membership of a local pressure group. Membership of other bodies, including membership of other local authorities, or of public bodies, ought to be registered even where such membership does not place any disqualification on participation in business. An important purpose of the register is to make available to the public information about relevant outside interests which insiders might well take for granted.

101. We have no comments on the defined categories of pecuniary interests which must be registered under the present rules, which are broadly in line with practice in other public bodies.

102. We believe that councils should be encouraged to make the register available electronically, for example via the Internet.

103. We consider that joint boards should maintain their own registers, which may well simply involve drawing together the entries which individual councillors have made on the register of their councils. This is because the need to investigate the registers of all councils represented on a joint board places unnecessary difficulties in the way of a person, including another member of the joint board, who might want to discover the registered interests of members of such a board.

Penalties for Failing to Register

104. In our view, no useful purpose is served by making failure to complete the register a criminal offence. (Although separate figures are not kept, there appear to be very few prosecutions for failing to register a pecuniary interest). We appreciate that the aim in so doing is to emphasise the importance of registering pecuniary interests, but we consider that such an aim would be better served by shaping the obligation in a way which would make enforcement more likely and more effective. In practice, this would mean tackling failure to register through the council's disciplinary procedures. The criminal law, in our view, should be reserved for situations in which councillors **take actions** which put private interest above the public interest, or are otherwise against the public interest.

105. We were struck by the difficulty that councils can have in bringing their own members into line when they behave badly in this or other areas. In chapter 4 we discuss the issue of enforcement more widely and conclude that every council should establish a Standards Committee which would have the power to investigate misconduct and recommend action to the full council.

106. Failure to register an interest which falls within one of the categories defined in the code would be one of the matters that should fall under the disciplinary powers of the full council, acting on a recommendation from the new Standards Committee. There would be a right of appeal to a new Local Government Tribunal under that system.

The Present Situation: Declaring, Speaking, and Voting

107. At present, decisions on when to declare, and on when to refrain from speaking or voting, are made much more complex than is necessary by the mixture of documents and rules governing these decisions. There are regulations, the national code of conduct and, in England, the ombudsman's guidance.

108. As we said earlier in this chapter, the national code at present covers an unsatisfactory mix of general principles and specific situations. The ombudsman's guidance, while useful and sensible, sets down rules which seem to fetter both his, and the council's, proper discretion, and there appears to be some inconsistency in the way in which the rules bite in different situations.

109. We intend to approach the issue from first principles. Our starting point is again the new guidance for board members of public bodies, which says this:

> *'The chairman and other board members should declare any personal or business interests which may conflict with their responsibilities as board members. The board, in consultation with the sponsor department, should draw up rules of conduct for board members which ensure that such conflicts are identified at an early stage and that appropriate action can be taken to resolve them ...*
>
> *... In the absence of specific statutory provision, the common law requires:*
>
> > *that members should not participate in the discussion or determination of matters in which they have a direct pecuniary interest; and*
> >
> > *that when an interest is not of a direct pecuniary kind, members should consider whether participation in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that members might unfairly regard with favour, or disfavour, the case of a party to the matter under consideration. In considering whether a real danger of bias exists in relation to a particular decision, members should assess whether they, a close family member, a person living in the same household as the board member, or a firm, business, or organisation with which the board member is connected are likely to be affected more than the generality of those affected by the decision in question.'*
> > *(paragraphs 16 and 19)*

110. This particular formulation concentrates on the principles underlying the decision on whether or not to participate in the discussion or determination of a matter under consideration. An interest should be examined to see if it creates a real danger of bias.

A real danger of bias is created when the member or his or her close family are affected *more than the generality of those affected by the decision*. We have summarised our approach in the box below.

111. In this context we see no place for the widely misunderstood concept of an indirect pecuniary interest. There are direct pecuniary interests and other interests; the test we set out above of a 'real danger of bias' should apply in the case of all these other interests.

CONFLICTS OF INTEREST

If you have a pecuniary interest in a matter under discussion, you should declare the nature of the interest and withdraw from the room, unless you have a dispensation to speak.

If you have any other interest in the matter under discussion which creates ***a real danger of bias****, that is, the interest affects you, or a member of your household, more than the generality of those affected by the decision: you should declare the nature of the interest and withdraw from the room, unless you have a dispensation to speak.*

If you have any other interest which does not create ***a real danger of bias****, but which a member of the public might reasonably think could influence your decision: you should declare the nature of the interest, but you may remain in the room, participate in the discussion, and vote if you wish.*

If in any doubt about the application of these rules, you should consult a suitably qualified officer, such as your council's legal adviser/monitoring officer.

The final decision remains yours alone, but it may subsequently be referred to the Standards Committee of your council in case of dispute.

Public and Private Interests and Bias

112. The circumstances in which a member is required not to participate in a decision are different from those which underlie declaration of an interest. Declaration is required of interests which 'members of the public might reasonably think could influence your decision.' Circumstances may easily exist where declaration of an interest is appropriate because members of the public might reasonably think that that interest could influence a member's judgement, but where the interest is not one which creates *a real danger of bias* because of the particular effect of the decision on the member or the member's close family.

113. This needs some further explanation. A councillor is part of the community, and will have many interests in common with the rest of that community. By the nature of local democracy a councillor is likely to live and/or work in or close to the ward he or she represents. A councillor may also be involved with a particular interest group, or may be concerned with a particular cause. A councillor may well take a particular standpoint on an issue that divides the community.

114. In many cases, the outcome of council decisions may affect bodies in which the councillor has an interest. People whose causes the councillor supports may benefit. It would be strange if a councillor who championed the interests of disabled people, for example, had no connections with local associations for disabled people. The councillor might hold, or have held, office in such an association. It may well have been the councillor's role as a campaigner for disabled people that led to his or her election. It would be inappropriate for a councillor in this position to be debarred from council decisions on providing facilities for disabled people. It would be inappropriate to exclude such a councillor from consideration of planning applications, or applications for council grants, on behalf of organisations for disabled people, even ones where the councillor knew most of the members (although the councillor should be excluded from voting if he/she remained an office holder). Even then, it might well be appropriate to allow the councillor to have a dispensation (see below) to speak but not vote. The councillor's participation in the discussion would be of great value.

115. In such situations, even though the councillor has direct contacts with organisations, the interest is a public interest, not a private one. The important principle is that everyone concerned should know that the councillor approaches the matter from a particular background and standpoint, so that his contributions to the discussion and decision can be weighed by colleagues, and the press and public, against that background.

116. This is not, put in this way, a particularly difficult concept. The question becomes a little more difficult when a decision affects the local community where the councillor lives. A planning application for a major development may well affect a councillor in the same way as it affects those he represents. The councillor, like the neighbours, might well be concerned about the prospect of additional traffic. Like the neighbours, the councillor might well wonder whether the development will tend to increase or reduce the value of the family house. Like the neighbours, on the other hand, the councillor might be attracted by the prospect of the better facilities which the development would bring, and which the councillor's family would undoubtedly use.

117. The councillor in these circumstances is undoubtedly going to have at least a non-pecuniary interest in the outcome of the decision. Views in the community might be split, and it is impossible to be certain that the side which the councillor takes is entirely based on altruism and totally unaffected by a view of personal benefit or inconvenience. On the other hand, everyone in the community is making the same judgements, and if the councillor takes the wrong side, from the community's standpoint, they have a remedy at the ballot box. The important point is that the councillor's family will not be affected 'more than the generality of those affected by the decision'.

118. A good deal turns on the interpretation of the word 'generality'. There is no alternative to treating each case on its merits, because no system of rules can cover every hypothetical situation. If one hundred households are affected by a council decision, then most people would agree that a councillor similarly affected has no special interest which might debar him or her from speaking or voting, providing the interest is declared. If in a different decision ten households are affected, then in most circumstances a councillor

might feel that taking part in a decision was inappropriate. The councillor must make this judgement, but any individual decision will be in any case subject to the following tests;

- the advice of the council's legal adviser/monitoring officer;
- the views of the council's Standards Committee;
- the subsequent judgement of the ombudsman if a complaint is made;
- in serious cases, the verdict of the courts.

Pecuniary Interests

119. To some extent, a similar approach should be applied to pecuniary interests. In our view a pecuniary advantage or disadvantage which is no greater in principle than that which accrues to the generality of those affected by the decision should not be treated as a direct pecuniary interest. The ombudsman's guidance says, rightly, that a development immediately adjacent to a councillor's house might well have a particular impact on the value of the councillor's house, and so be a pecuniary interest. Yet the guidance says also that a councillor whose business premises were on a street affected by proposed parking restrictions would also be regarded as having a pecuniary interest. This must depend on the circumstances of the individual case. Every person running a service business in a small town has an interest in major new developments bringing additional spending power into the town. In a town dominated by one major employer, many members of the council are likely to be connected in some way with people whose employment depends on that firm's continued local activity. There is a substantial difference between a personal benefit or loss which is shared with the generality of the community, and one which accrues because of decisions which particularly affect a councillor's own family.

Dispensations

120. The new system outlined above will also have the effect of reducing the need for exemptions and dispensations. These are permissions, either granted by the Secretary of State, or by councillors to themselves, to continue to participate in a discussion and vote despite the existence of an interest.

Exemptions and Dispensations from Pecuniary Conflicts of Interest

121. Pecuniary interests may not disqualify a councillor from speaking and/or voting if an **exemption**, a **general dispensation**, or a **particular dispensation** apply.

122. There is a general exemption from the rules covering pecuniary conflicts of interest if a councillor has a direct pecuniary interest by virtue of being a council taxpayer or a consumer of council services. In such circumstances councillors are not disqualified from speaking or voting, although the courts have not interpreted this exemption very generously. The same applies to any discussion of council allowances.

123. There are also 'general dispensations' for pecuniary matters. Councillors who are council tenants may speak and vote on a discussion of housing policy, unless their own

tenancy is under consideration or they are in arrears of rent. The same applies to councillors who have children of school age when education policy is being debated, and to councillors who are in receipt of statutory sick pay when that is the subject of discussion. These have had to be the subject of general dispensations granted by Secretaries of State because the exemptions have been interpreted so narrowly in court judgements.

124. 'Particular dispensations' have the same effect (allowing speaking and in some cases voting), but are granted by the Secretary of State to individual councillors on an ad hoc basis (they are virtually unknown in Scotland). Dispensation to speak is granted quite readily, unless the councillor's pecuniary interest is 'so immediate' that it would be wrong to take part in the discussion at all. Dispensation to vote is normally granted only when the failure to do so would lead to more than half the committee or council having to withdraw or would upset the established political balance of an authority.

Self-dispensations from Non-pecuniary Conflicts of Interest

125. In cases of non-pecuniary interests, councillors may grant themselves 'self-dispensations' if otherwise the political balance of the council or committee would be upset or more than half the members of the committee or meeting concerned would have to withdraw. Councillors are expected to seek advice from the chair of the authority or from a senior officer before granting themselves such a dispensation.

Dispensations Under the New System

126. The confusing arrangements for dispensation, exemption and self-dispensation are largely a consequence of the complexity of the present arrangements for handling conflicts of interest. If a new regime on the lines we have proposed were introduced, there would be no need for the retention of exemptions, all of which deal with circumstances in which there is no real danger of bias as we have defined it.

127. Arrangements to permit the participation and voting of a councillor with a pecuniary interest, or a non-pecuniary interest creating a real danger of bias, would however need to be retained.

128. Dispensations to speak would remain subject to the test that the interest might be considered so immediate that it would be wrong for the councillor to participate.

129. The present test for voting is essentially a mathematical one, allowing voting when more than half of those present would otherwise have to withdraw, or when the political balance of the authority or committee would be upset.

130. There is no reason in principle why these judgements should not be exercised at local authority level. The use of dispensations would be monitored by the council's Standards Committee. None of our witnesses, it is true, expressed much dissatisfaction with the rulings received from Government departments under the present arrangements, but full devolution of the process would, sooner or later, be a sensible reform.

Issuing Guidance

131. While the circumstances of individual cases are almost infinitely variable, we believe the underlying principles are very clear. Most of the difficulties for individual councillors are caused by well-meaning but misguided attempts to cater in statutes and regulations for a whole range of specific circumstances, and by putting unnecessary and unhelpful detail into the code.

132. We believe that the guidance issued by the ombudsman in England takes the right approach, in that it attempts to advise councillors by reference to decisions which have been taken in individual cases. The ombudsman's task, like that of councillors, has been made more difficult by the national code's attempt to define interests by using imprecise words like 'real and substantial' rather than the common law approach of looking at outcomes.

133. However we do not believe that it is right for the ombudsman himself to issue such guidance. That creates a danger that the test the ombudsman might apply in his judgements is the extent to which the councillor has complied with his guidance, rather than what actually happened in the individual case. It should be for the local government associations to issue such guidance as is necessary.

R8 Every council should have to maintain a public register of councillors' interests, listing their pecuniary interests; those non-pecuniary interests which relate closely to the activities of the council and associated bodies, or which members of the public might reasonably think could influence a councillor's judgement; and pecuniary interests of close family members and people living in the same household as the councillor.

R9 It should no longer be a criminal offence to fail to register a pecuniary interest.

R10 Unless they have a dispensation, Councillors who have a pecuniary interest in a matter under consideration should have to declare that interest, withdraw from the meeting or discussion, and take no further part in the business in question.

R11 Councillors should have to declare any interest which is not of a pecuniary kind, and which members of the public could reasonably think could influence their actions, speeches or votes.

R12 Unless they have a dispensation, councillors should withdraw from consideration of matters where they have an interest whose existence creates a real danger of bias, that is where they or their close family are likely to be affected more than the generality of those affected by the decision in question.

R13 All the existing primary legislation on conflicts of interest in local government should be repealed and be replaced by a provision giving effect to the common law principles set out above.

R14 Regulations under the statute should be confined to requiring councils to have public registers of interests, to setting out the framework of interests which must be included in those registers, and requiring councils to have rules covering declaration, withdrawal, and disciplinary procedures.

R15 Councils should set up a Standards Committee, composed of senior councillors, which should have the power to examine allegations of misconduct by councillors and to recommend disciplinary action to the full council, including the punishment of an individual councillor.

R16 A meeting of the full council (open to the public and press) to consider a report of the Standards Committee should be held as soon as possible after the Standards Committee has reported.

R17 The Standards Committee should have powers to propose the withdrawal from decisions of a member whose interests it considers are such as to create a real danger of bias, and to recommend disciplinary action against members who breach the council's code.

R18 The Commissioner for Local Administration in England should cease to issue general guidance about conflicts of interest.

Chapter 3

The Local Government Officer

Councillors and Officers

'Appointing people who agree with you is stupid. You do not need advice from people who agree with you, because they agree with you. You need advice from people who will not agree with you.' ***Frank Dobson MP, Spokesperson on the Environment and London, Labour Party***

'The issue, it seems to me, always is to get local ownership — if I can use those words — of the kind of principles which one would expect to see enshrined in a national code. And that argues to me for open debate, discussion and exchange among members, among officers and between officers and members about their respective roles and relationships. Too often too much goes unspoken, unsaid, undiscussed. Situations and circumstances change, problems arise and there is no adequate foundation. So the development of local protocols and local codes, seems to me to be a very important one.' ***Professor Michael Clarke, Head of School of Public Policy, University of Birmingham***

'At the same time, they [officers] have to understand that they operate within a political system and that the people who have been elected have been elected on the basis of a manifesto commitment that they intend to translate into a policy direction for the authority over the lifetime of that administration. It is their duty to work to that administration and to help us translate that series of manifesto commitments into policies that we can take through the council and implement within the community that we serve.' ***Councillor Russell Goodway, Leader, Cardiff County Council***

'I do not think it is part of a proper partnership relationship between officers and councillors that officers are somehow seen in public as people who can be appropriately harangued or criticised or told that they do not know what they are doing. I think that the best relationship between officers and councillors is much more of a partnership relationship.' ***Gerry Stoker, Professor of Government, University of Strathclyde***

134. No local authority can function properly without a good relationship between its councillors and its officers. Where the relationship breaks down, an atmosphere of suspicion or dislike can make it very difficult to devise and implement policies in any consistent way.

135. We asked some of our witnesses whether there were common features linking authorities where there had been a breakdown of officer/member relations. No consensus emerged, but it was generally agreed that defining the precise boundary between matters dealt with by officers and those by councillors was very difficult.

136. This is at first sight surprising. The different status of the two groups is clear enough. Councillors are elected members, usually party politicians, serving for fixed terms and representing a defined geographical area of the authority: officers are professional (and sometimes professionally qualified), non-political, and servants of the authority as a whole.

137. Those who are most familiar with central government may be tempted to make an easy analogy with civil servants and the Government (technically the Crown) for which they work. The analogy is, however, misleading, because local government officers are legally employed by each and every member of their authority, not just those who are in a majority, still less the leading members of that majority. Unlike central government, in local government the executive and the legislature are the same body served by the same staff.

138. To perform successfully as an officer, faced with the demands of councillors of varied and opposed views, requires diplomacy and, where necessary, firmness. A sensible officer will want to maintain a balance between the various parties on the authority, but will no doubt devote more time and effort to fulfilling the requests of the majority party, for they are, after all, more likely to become the policy of the council as a whole. There should be no quarrel with that, any more than with the right of officers to deal even-handedly with parties on a hung or balanced council, regardless of which is numerically the largest. In the hurly-burly of political competition, it may seem sometimes to minority-party councillors that officers give them a raw deal. This may break out into personal and public attacks on named officers: a practice strongly to be deprecated, and one which may invite the kind of disciplinary sanctions we outline in chapter 4.

139. There has been concern that officers were becoming too closely identified with the controlling party in some authorities. We found little evidence to support this beyond one or two notorious cases. Where it happens, it is improper: it causes a confusion between the accepted roles of councillors and officers, and makes local government less effective. Since 1989 there have been regulations restricting the public political activities of senior officers, analogous to those in the civil service. No convincing case was made to us for their abolition or alteration.

140. Regulations also require councillors to make officer appointments on merit. There have been, and will continue to be cases where suspicion of nepotism or political favouritism exists, and a recent investigation took place precisely on this subject, into appointments at the former Monklands DC. We do not, however, believe that this is a common practice on the basis of the evidence we have heard.

141. Some have gone so far as to suggest that councillors should not have a role in the appointment of officers. We do not agree; nor do we believe that different rules should apply to the appointments which have councillor involvement and those that do not. Local authorities should make arrangements suitable to their needs, so long as the principle of appointment on merit is respected. As we note in chapter 4, the local government ombudsman should be the proper recipient of complaints about decisions which do not appear to meet that principle.

Defining the Working Relationship

142. There have been a number of attempts to define the proper working relationship between officers and members. The present national code states, rightly, that 'mutual respect between councillors and officers is essential to good local government' (paragraph 24). It defines the boundary between them as follows: 'Both councillors and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only as long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees, and sub-committees.' (paragraph 23).

143. This passage illustrates the limitations of the present national code. In practice, the simple split of policy (councillors) and implementation (officers) is neither always accurate nor illuminating. It is clear that there exist enormous variations in local government in the way the relationship works, both broadly and in detail, and that these relationships cannot be summarised in a code designed to apply nation-wide. In our draft principles (see pages 20–21) we have therefore included a simple statement of the need for councillors to respect the position of officers and treat them with courtesy: it goes without saying that the same is true for officers and their attitude to councillors.

144. Some authorities have drawn up statements of their own defining how the relationship should work (we attach at appendix III the protocol for member/officer relations from Birmingham City Council). This is a useful step, particularly in authorities where there has been some trouble in the past. We believe that all authorities should consider introducing such statements, tailored to reflect their traditions and practices.

145. It is particularly important — as the Birmingham protocol says — that proper arrangements are made for the working practices of officers and party groups. We do not believe that a single national model for these practices is appropriate; but we are sure that whatever the precise arrangements in an authority, the following principles must be observed:

- advice to political groups must be given in such a way as to avoid compromising an officer's political neutrality;
- advice must be confined to council business, not party business;
- relationships with a particular party group should not be such as to create public suspicion that an officer favours that group above others;
- information communicated to an officer by a party group in confidence should not be communicated to other party groups.

146. An officer who acts in such a way that he or she breaches these principles should be subject to disciplinary procedures.

147. There is at present no statutory code for officers on the lines of the national code for councillors. Instead, a voluntary code published by the Local Government Management Board (LGMB) has been adopted by many councils, either verbatim or adapted for their particular needs: other councils have developed their own codes. It is clearly desirable that staff in every authority should have the guidance of a code of conduct, as with other people in public life. Councils which do not already have a code of conduct for staff might usefully take the LGMB code as a model which they could use or adapt.

148. We have considered whether there is a need for a statutory approach to officer codes on the lines of the councillors' code. We would not normally advocate such a course: codes are not laws, they are statements of values, and the effect of making them enforceable is to make them less useful. Were it not for the wide use of statutory regulation for the conduct of councillors, we would not even consider it for officers. As officers, unlike councillors, are employees subject to normal employment law, an additional code with statutory enforcement is unnecessary.

149. We do however note that the law on the declaration of interests by officers is much more restricted than that for councillors. There is no statutory register, and the law requires officers only to disclose in writing any interest they have in a contract with the authority. This form of declaration is narrower than that for members, where the disclosure applies to a contract, proposed contract 'or other matter'.

150. As the LGMB code proposes, it would be good practice for authorities to introduce systems of registration and declaration for officers which parallel those for councillors. As officers are employees, and entitled to privacy provided they declare relevant matters to their employer, there is no necessity for these registers to be public. Failure to register or declare an interest should be a disciplinary offence subject to normal procedures.

'What I and my staff find is that they can telephone the local authority and talk to the switchboard to ask to speak to the monitoring officer and the switchboard will never have heard of the monitoring officer, let alone be able to identify him or her.' ***Elwyn Moseley, Local Government Ombudsman for Wales***

'I do not relate to the artificial system that exists in terms of the monitoring officer's role. At the end of the day, whatever rules, whatever organisational settings you have, it depends on the relationship that exists between the members and the officers of that authority. I believe it puts an officer in an invidious position to be a monitoring officer. I certainly have taken that role on board as a chief executive.' ***Byron Davies, Chief Executive, Cardiff County Council***

'Most Chief Executives, I think, take the view, however, that if you are going to be successful your relationship with leading members relies much more on their confidence in you and your ability to work with them, than it does on any formal legal requirements.' ***Roger Morris, immediate past President, SOLACE***

Statutory Officers

151. There is a small group of officers who have specific statutory duties to perform relating to conduct (others have duties relating to, for example, the provision of education or social services, but these are not our concern). The characteristic of these officers is that they have powers to insist on the consideration of some matter, or to delay decisions of the council because they detect some possible wrongdoing or misconduct.

152. The head of paid service (normally the chief executive) must report as appropriate on the co-ordination of the authority's affairs, levels, grades and organisation of staff, and their appointment and management. The report must go to every member of the authority and must be considered by the full council within 3 months.

153. The monitoring officer (sometimes the chief executive, more commonly the chief legal officer, sometimes someone else) must report if any proposal, decision or omission by the authority, its committees or sub-committees, or officers has caused or is likely to cause a contravention of the law or any code of practice; or a maladministration or injustice. These rules also cover joint committees on which the authority is represented. The monitoring officer's report must be considered by the full council within 21 days, and in the meantime no step can be taken to give effect to the proposal which has occasioned the report.

154. Authorities must also nominate a chief financial officer. The chief financial officer is responsible for making proper arrangements for the administration of the authority's finance, and must be a member of an approved accountancy body. It is the duty of the chief financial officer to issue a report if the authority has incurred, or is about to incur, unlawful expenditure; has taken or is about to take a course of action which would be unlawful and likely to cause a loss to the authority; is about to enter an unlawful item of account; or is likely to incur expenditure in excess of the resources available for the financial year. Chief financial officers also have powers to audit their authority and to demand the documents necessary to do so.

155. These powers date largely from the Local Government Act of 1989, which represented the high-watermark of conflict and mutual suspicion between central and local government. They were introduced in response to a few high-profile cases of authorities which seemed ready to defy the Government and to break the law in doing so.

156. As often, hard cases made bad law. Most of our witnesses, including the statutory officers themselves, regarded the legislation as badly drafted and literally unworkable. Others saw the statutory duty as an unnecessary formalisation of a professional responsibility to warn against impropriety that was integral to the job of a good council solicitor or treasurer in any case. The result has been that the statutory powers are very seldom used. Some have suggested that they should be abolished: we believe that they should, at minimum, be reviewed, as will be necessary if our proposals in chapter 4 are accepted.

157. On the other hand, some officers clearly felt that the existence of statutory powers, whether or not they were used, was of assistance to them in restraining councillors in some authorities from sailing too close to the wind. Like the threat of surcharge, officers told us privately, the statutory powers 'kept councillors in line'.

158. We can see that in some situations the relationship between officers and councillors might be so uneasy as to prompt such language, but we find it worrying. Councillors are elected and enjoy a stronger mandate to determine policy than officers, however wise and experienced. If the law says that it is the duty of an officer to warn against a specific course of action then the officer must do so, but councillors must be allowed to exercise the final judgement on the matter.

Protection against Dismissal

159. At present, under regulations made by the Secretary of State, there is protection for chief executives who may be under the threat of dismissal. Each authority must have arrangements set out in its standing orders which provide for the appointment of an independent assessor who must agree with any disciplinary action which the council proposes to take against a chief executive as a result of alleged misconduct.

160. In practice these arrangements, which were again a response to difficulties believed to have existed in some councils in the 1980s, have been little used. Most chief executives take the view that, if relationships between themselves and leading councillors have broken down to such an extent that disciplinary action is being considered, resignation is inevitable. Not unlike the powers of statutory officers, however, the possibility of a chief executive having a defence against unjustified attacks may curb the more impetuous members.

161. We did not receive any evidence to the effect that these regulations should be removed. On the contrary we received some suggestions that their protection might be extended to other officers. We agree that it would be logical to offer the same defence to monitoring and chief financial officers. If their powers were ever to be used in anger, they might be the first casualties of the conflict. We do not exclude the possibility that there may be other senior officers who might find themselves in need of the same protection; but we have confined our recommendation to those officers most closely associated with issues of conduct and impropriety.

R19 Every local authority should be required to draw up a code of conduct for officers (based either on the LGMB model or a locally-drafted version) incorporating rules for the registration of and declaration of interests by officers similar to those we recommend for councillors.

R20 Every local authority should have its own written statement or protocol, governing relations between members and officers.

R21 The statutory powers of the head of paid service, monitoring officer, and chief financial officer should be reviewed by the Department of the Environment (and the Scottish and Welsh Offices) to determine whether they are workable and effective.

R22 The protection already available to chief executives who are threatened with disciplinary action should be extended to the council's monitoring and chief financial officers, subject to the findings of the review proposed in R21.

Chapter 4

The Enforcement of Standards

162. In Chapter 2 we described the structure of codes and regulations which we propose for councillors in local government. The essence of that structure is that the initial responsibility for compliance with the code and regulations should lie with the individual, who will have the duty to register and declare interests, and to decide when to refrain from speaking and voting, and to leave the meeting. Whether or not individuals seek advice, they cannot evade their own responsibility.

163. One of the problems with the present conflicts of interest arrangements is that there is not a unified regime. The most noticeable difference is between the treatment of pecuniary and non-pecuniary interests, where it is a criminal offence not to register a pecuniary interest, but there is no requirement at all to register non-pecuniary interests, and there is no sanction against a councillor who fails to declare a non-pecuniary interest. Yet all the evidence is that conflicts involving non-pecuniary interests are just as great a source of concern as those involving pecuniary interests, and that the former are in many ways more difficult to deal with.

164. Although we have recommended that registers should include non-pecuniary interests, there is no case at all for making failure to register such interests a criminal offence. As we have noted, the range of potential non-pecuniary conflicts of interest is vast and unpredictable. It would not be possible to prosecute someone for non-registration of an interest which might only become the source of a conflict of interest at a later, unforeseen, date.

165. We do, however, agree with the Department of the Environment's view that the difference in treatment between pecuniary and non-pecuniary interests 'is a source of confusion'. As we mentioned in chapter 2, we therefore conclude that non-registration of a pecuniary interest should no longer be a criminal offence in its own right.

166. We do not underestimate the presentational difficulty of decriminalising this. It could be seen as being soft on misbehaviour. We are certain that this would not be the result. In our view failure to register a pecuniary interest is an offence not because the criminal law is the most effective enforcement mechanism, but because the fact that it is an offence is intended to send a signal to councillors that they must register. It has to be borne in mind that no actual wrong arises from failure to register an interest: any damage to the public interest occurs only if and when a councillor who has failed to register or declare an interest participates in relevant business. Because an offence can occur in the event of a fairly minor and technical omission, enforcement is uncertain. We received anecdotal evidence that complaints were made to the police merely to gain political advantage from the publicity, and that the police, quite reasonably, were reluctant to prosecute unless the simple failure to register was accompanied by some indication of improper intent. The number of prosecutions is therefore negligible. It is a waste of police time and money to involve them in such an issue. Enforcement would be much more effective and certain if it was undertaken as an administrative procedure within the council itself.

167. Failure to register an interest would of course be a factor to take into account in any prosecution for corruption under the existing law, or under the new offence of misuse of public office which we propose later in this chapter.

168. Failure to **declare** a pecuniary interest is more serious, because the implication of a need to declare is that a situation which might give rise to a conflict of interest has actually arisen. But failure to declare a non-pecuniary interest may be equally serious. In either case, the failure may range from the trivial to the seriously corrupt. When we considered arrangements in the House of Commons, we concluded that the arrangements worked reasonably well in serious cases, but were inadequate for day to day enforcement of the House's own rules. There are elements of the same problem in local government. The system should be recast to provide better arrangements for day to day enforcement of the rules, which are likely to operate more effectively because they are not disproportionate, without reducing the likelihood that serious misdemeanours will be rigorously prosecuted.

169. As with other public bodies, we believe that the way forward lies with internal disciplinary procedures supported by external scrutiny, and backed up by a new legal framework.

> *'It does little to foster public confidence in the integrity and impartiality of Local Government when the Council is powerless to discipline its own members.' Ian Kirkland, Borough Secretary and Solicitor, Ashford Borough Council*
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> *'.....although we do have codes of practice and disciplinary procedures which we can apply when officers of the council are guilty of improper behaviour, we have no such codes of practice and sanctions available to the council in the event that an elected member is guilty of misconduct.' Colin Sinclair, Chief Executive, City of Sunderland Metropolitan Authority*
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> *'I would have thought that the most important sanction on any elected member is to bar them from being an elected member in future. Perhaps we should be relying more on that sort of thing.' David Rendel MP, Spokesperson on Local Government, Liberal Democrat Party*

An Internal Enforcement Mechanism

170. There is at present no way in which a council collectively can act against an individual councillor for non-compliance with the code of conduct, other than by exclusion from committees with the consent of the councillor's party group. We have heard in oral evidence of the difficulty which occurred in one council over a councillor who was accused of harassing junior employees, and during our informal visits we heard of many cases where councillors had behaved inappropriately to officers or other members in one way or another.

171. We also received much indignant evidence from councils which had been found guilty of maladministration by the ombudsman, on account of the misbehaviour of a single councillor. This system applies even if the council itself has made every effort to prevent maladministration taking place, or has disowned the actions of the councillor concerned. Councils are surely right to say that members of the public do not always appreciate the subtle degrees of blame which may accompany a finding of maladministration: mud sticks.

172. These factors suggest that there would be merit in giving councils a collective right to control any misconduct by individual members which amounted to a breach of their code of conduct. That would also follow best practice in other parts of the public sector, where we have recommended that standards of conduct should be upheld by a combination of internal controls and external scrutiny.

173. There is by no means universal agreement that councils should have such a power. There are concerns that it might be misused for political reasons, and that it could not be exercised impartially because of the close relations between councillors. Yet the House of Commons has such a sanction, and the Speaker is able to suspend Members, while in most non departmental public bodies the chairman, or the board by resolution, can require a member's withdrawal, and the appointing authority can exercise powers of dismissal. Why are local authorities, and their members, alone deemed to be unable to put irrelevant matters to one side in taking these sorts of decisions?

174. Those in local government who oppose such a power tend to prefer party mechanisms. They are unwilling for disciplinary issues to involve councillors from other parties. We do not decry party mechanisms. They are part of the informal arrangements which frequently resolve issues of conduct before a formal stage is reached. The council has other such means, through the party leaders, the chief executive and, of course, the monitoring officer. There are however cases where party mechanisms cannot work. Some members are not amenable to party discipline, or are not members of a party group at all. In a tight political situation a party may prefer to live with some problem rather than give ammunition to its opponents. In any case, the imperative underlying party discipline must inevitably be the party's interests and reputation, rather than those of the council. It is true that these will often coincide, and that one will depend on the other, but that will not always be the case.

A Standards Committee

175. Our view is that an internal council disciplinary procedure will work so long as it is tightly constrained, and subject to an external appeal procedure. We have considered a number of ways in which such a system might be constructed, and have concluded that each council ought to have a Standards Committee. This should be a small all-party committee, composed of experienced councillors, and chaired by someone other than the leader of the administration. Depending on the circumstances, it might be suitable to have the Mayor or Provost in the chair, or (by analogy with the Public Accounts Committee in the House of Commons) to have the committee chaired by a senior opposition councillor.

176. The council itself should be given statutory powers of discipline, to be exercised only after a recommendation from the Standards Committee. We believe that the council should have power to bar councillors from particular meetings, from access to particular

papers or premises, and to restrict their contacts with named staff. It should also have powers to suspend or remove councillors from particular committees, and to suspend them entirely from council meetings and council business. It should not have power to impose financial penalties. In the event of a suspension from the council, this should last for a maximum of three months. If the council declines to lift the suspension after three months, the councillor should be deemed to have resigned, and a by-election should be held. The councillor should be eligible to stand for re-election. In the event of re-election, and repeated misbehaviour, it should be open to the council to apply to the proposed Local Government Tribunal (see pages 46–48, below) for a disqualification order.

177. In any case, the councillor affected should have the right to appeal to the Local Government Tribunal, and the penalty appealed against would be suspended until the appeal is held.

178. We do not think it is right to be prescriptive about how the Standards Committee should operate, because the circumstances appropriate to each council will vary. The existence of the proposed Local Government Tribunal will compel councils to adopt procedures which comply with the principles of natural justice, and no doubt these will be refined with experience. But we have a few observations which councils may wish to take into account.

179. First, we believe it will often be sensible to have one or more co-opted members on such a committee. The presence of outside assessors, who will not have been involved in any animosity or argument within the council which may have preceded the use of the disciplinary procedure, will help to reassure all concerned that a just and impartial decision is being reached. Such co-opted members would normally be people of standing, with relevant qualifications or experience.

180. Second, we believe it is important that such a committee, when hearing a case, should be advised personally by the relevant senior officers of the council — the head of paid service, the solicitor, the monitoring officer and, where financial matters are concerned, the chief finance officer. A disciplinary hearing should only take place in the light of a written report prepared by the appropriate officer. Its proceedings should be in public, although it should meet privately to discuss its reports. Affected parties should be entitled to be heard.

181. Third, we consider that while the Committee could operate as a free-standing body, meeting only when disciplinary cases arose, a council might find it useful to consider giving such a committee a role at the apex of its complaints procedures. We have in mind these areas -

- many concerns have been expressed about the role of the monitoring officer. We consider that the monitoring officer's role is most effective if it is primarily conceived as advisory. The likelihood of the monitoring officer being placed in a personally difficult position in pursuit of statutory duties would be eased if the postholder had the backing and advice of the Standards Committee, which could take the lead in advising the full council on its code of conduct and standing orders;

- we believe that, in line with good practice, complaints should not be considered by the local ombudsman until internal mechanisms have been exhausted. This means that every council should have an internal complaints mechanism complying with the principles of good practice which the local ombudsman sets out. In our view, part of the statutory role of the monitoring officer should be to report to the council annually on the operation of its own complaints systems, for both external complaints and staff complaints, and in particular for the use of the internal whistle-blowing system which we recommend (R26) that every council should have. It would be useful for the Standards Committee to oversee this process.

182. We have also considered whether audit matters might fall to the Standards Committee, thus adapting the proposal of the Audit Commission that all authorities should have audit committees. Modern public sector audit goes much wider than propriety of expenditure, however. In any case, some authorities have reservations about the practicality of instituting an audit committee at all: the analogy with a public limited company being debatable. This is a matter for each authority to consider.

External Appeals

183. The introduction of an internal disciplinary procedure for councillors will make it necessary also to introduce an external appeals mechanism. In considering how this might best be done, we have examined the possibility of a role for the ombudsman, for the Secretary of State, or for the Audit and Accounts Commissions. We have concluded, however, that the most appropriate and straightforward course would be to introduce a new body, to be called the **Local Government Tribunal**. (We would anticipate that a separate Tribunal would be needed for Scotland, and probably for Wales).

184. The primary purpose of these Tribunals in respect of discipline would be to hear appeals from councillors who had been subjected to disciplinary action by their own local authority for breaching its code of conduct. The Tribunals would therefore approach their task by examining individual cases, and considering first whether the authority had been correct in its finding that the code had been breached, and second whether the disciplinary action taken had been proportionate to the misdemeanour. The Tribunals would have power to substitute an alternative sanction. Ultimately, in the event of repeated misbehaviour, an authority would be able to ask a Tribunal to make an order disqualifying an individual from holding public office.

185. Councillors should be able to include as a ground of appeal to a Tribunal that the procedures followed by their local authority had been unfair and had breached the rules of natural justice, and it should be open to the Tribunals to require councils to amend their procedures even if they uphold a complaint.

186. It would also be necessary for the Tribunals to be in a position to consider the terms of that part of a local authority's code of conduct which a councillor was alleged to have breached, and to determine whether it complied with the requirement that it should have the same effect as the approved model code. The Tribunal would have to be able to require councils to amend their codes to bring them into line with the model code.

187. Because the Tribunals would therefore have to be familiar, on a case by case basis, with the model code and the scope for variations, we believe it would also be appropriate for the Tribunals to fulfil the fall-back role of reviewing codes which were referred to them by the appropriate Secretary of State on the ground that the codes failed to meet the statutory requirements, and of ordering their amendment if necessary.

188. On balance, our view is that there should be no right for a third party to appeal to a Tribunal when a council does not uphold a complaint against a councillor. We appreciate that there may be cases where a complainant against a councillor feels aggrieved that a council has not upheld the complaint, but we think it would be wrong to proceed on the basis that a council's procedures are likely to be so unfair as to damage the interests of a third party. The arrangements proposed will have a quasi-judicial nature, and we believe that to have a second round, in the event that the council found the councillor had not breached the rules, would risk being oppressive in respect of the councillor concerned.

189. We believe that setting up Tribunals with these powers, operating primarily on a case by case basis, will make it possible to combine the greatest possible degree of freedom for local authorities to establish their own arrangements for securing proper standards of conduct with a strong framework of external scrutiny.

190. We believe that the Tribunals should operate under a framework of rules approved by the Council on Tribunals, and that the Secretaries of State should be responsible for issuing these rules. The Secretaries of State should appoint the members, with the Lord Chancellor's agreement (if that is considered appropriate) to the appointment of members qualified to take the chair.

191. We do not believe that it will be necessary for appointments to the Tribunals to be full-time. While we assume that separate arrangements will be wanted for Scotland, and probably for Wales, we do not believe, at least initially, that it will be necessary to have more than one Tribunal for England. It may be thought appropriate to appoint a single person to take the chair in all cases, with members on call as necessary, to achieve consistency at least until a body of casework is established, but in due course it could be appropriate to have a panel of people on call to chair the Tribunal hearings. We believe that every effort should be made to arrange local hearings, if that can be done without disproportionate cost.

192. We do not think it will be necessary for the Tribunals to have a wholly free-standing secretariat, nor do we think that their secretariats must necessarily be part of central government. We can see attractions in asking the local ombudsmen's offices to provide the administrative support, since those offices also have access to legal advice, but we can see also that other bodies, including the Local Government Association and the Convention of Scottish Local Authorities, might be well able to run such a system. We believe it right to defer a final decision on where to place the secretariat until discussions with the various bodies concerned have taken place.

R23 The Standards Committee should be able to recommend the suspension of councillors for up to three months, as well as the imposition of lesser penalties.

R24 There should be Local Government Tribunals in England, Scotland, and Wales with the power to hear appeals from councillors who have been subject to a penalty imposed by a council; and to require an authority to alter its Code of Conduct, standing orders, and other procedures when necessary.

R25 The Local Government Tribunals should hear appeals from councillors against disciplinary action by their councils following a recommendation of the Standards Committee; and should have the power to disqualify councillors from office.

> *'I would suggest ... that each individual local authority [should] have an efficient system of whistle-blowing so that there is a genuine fear on the part of the individual that might be tempted into corruption that their deeds might well be found out. For me it is the likelihood of discovery that is the greatest deterrent.' Detective Superintendent Peter Brant, Operational Command Unit Commander, Fraud Department, Metropolitan Police Service*
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> *'There are two watchwords in dealing with whistleblowing, confidence and authority. It is a question of confidence that the person who makes the complaint must know that it is going to be properly investigated and addressed as necessary and, tied in with that, that the person to whom they are making the complaint has the authority to do something about it.' Nick Leigh, Chair, Chief Officers' Forum, UNISON*

Whistleblowing

193. The Local Government (Access to Information) Act 1985 imposed demanding standards of openness on local government, which compare favourably with other parts of the public sector. We received some evidence, notably from the local media, that these standards were not always observed, which, if true, would be reprehensible. The statutory arrangements, however, seem to us to be very much in line with the best practice we have recommended for other public bodies. High standards of openness should be coupled with a positive approach to whistleblowing. This is a matter on which we have, in our previous reports, adopted a consistent and firm approach which has been fully accepted by government. In our first report we recommended that:

> *'... each ... [public] body should nominate an official or board member entrusted with the duty of investigating staff concerns about propriety raised confidentially. Staff should be able to make complaints without going through the normal management structure, and should be guaranteed anonymity'.*

194. We made similar recommendations in our second report. The essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course.

195. We consider that local government should be expected to adopt this approach, and we note that the LGMB has produced recommendations on these lines. In some ways there is less need for local government employees to go to external sources, because there will usually be opposition councillors only too ready to pick up on matters of concern. That may not be a desirable way to ventilate an issue, however, and it would be sensible for councils to adopt the following approach:

- creating a route for confidential whistleblowing within the management structure, perhaps as part of the duties of the monitoring officer;
- permitting staff to raise matters in confidence with the local government ombudsman or district auditor;
- allowing access to some other external body, such as an independent charity.

196. In all cases the usual test would apply that the concerns are raised in good faith and without malice, in order for the whistleblower to be immune from disciplinary sanctions for breach of confidence.

R26 Every local authority should institute a procedure for whistleblowing, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation. The Standards Committee might well provide an internal destination for such complaints.

'We are not adversarial at all. We are inquisitorial and we set out to have a common aim with complainants and local authorities which is (a) to get at the truth and (b) to co-operate, to try to put things right not just for the complainant but also for other people so that they do not suffer the same consequences. Our concern is that enforcement might change that, that it might become adversarial, that it might become much more like the courts and we think that might not be in the interests of complainants' Edward Osmotherley, Chairman, Commission for Local Government in England

'Overall, and to our disappointment as a strong supporter of the Ombudsman in principle, our experience is of a service which is not living up to its potential. Inevitably the Ombudsman deals with contentious cases and frustrated individuals who use the service as a last resort. This can colour perceptions of its effectiveness. Nevertheless, we have encountered genuine problems with both the scope of the Ombudsman's powers and the complaint procedures for individuals. On too many occasions the public are left dissatisfied with the service provided by local authority and by the sanctions available to them when seeking redress. In many cases this dissatisfaction is not related to the question of whether a local authority has handled an issue fairly or not.' Tony Burton, Head of Planning and Natural Resources, Council for the Protection of Rural England

The Local Ombudsmen

197. Inevitably, our study has touched on the role of the local ombudsmen, and we have received valuable evidence from them in England, Scotland and Wales. It has not, however, been our task in this study to conduct any general review of the ombudsmen's role and functions: these issues have been the subject of separate consideration recently.

198. The purpose of the local ombudsmen — properly the Commissioners for Local Administration — is to provide independent, impartial and prompt investigation and resolution of complaints of injustice caused through maladministration by local authorities. In England, the ombudsman has issued guidance intended to promote fair and effective administration in local government.

199. The ombudsman can investigate administrative decisions, but is excluded from investigating policy decisions, subjects which affect all or most of the people living in a council's area, such as a complaint about a council wasting public money, matters where there is a right of appeal to the courts or to Ministers, or contractual and personnel matters.

200. When making a report the ombudsman can make a finding of no maladministration, of maladministration but no injustice, or of maladministration causing injustice. The ombudsman may recommend how matters should be put right, including apologies, compensation and changes in procedure. However the ombudsman cannot enforce his recommendations on a council: although authorities generally comply with the ombudsman's recommendations, his formal powers are limited to requiring the authority to publishing his findings in the press.

201. Lord Woolf, in his review of the criminal justice system, recommended that the ombudsmen's rulings should become enforceable, as did the recent Scottish Office/COSLA task force on local government in Scotland. No decision has yet been taken on that recommendation. It is clear from the evidence we received that neither the ombudsmen, nor local government, would welcome such a change: the overwhelming consensus of opinion presented to us is that better outcomes are achieved overall through a non-adversarial system which involves the ombudsmen working largely with the co-operation of the local authority in achieving redress, rather than achieving the arms-length relationship which an ombudsman with powers of enforcement would require.

202. It is for this reason that, although we considered recommending that the ombudsmen should collectively constitute the proposed Local Government Tribunals, we decided not to do so. As we have noted above, however, we see no reason why the ombudsman's office should not provide the secretariat for the Tribunal. Moreover, if the government accepts our recommendation for a tribunal, it might wish to consider, in the context of taking forward the Woolf and the Scottish Office/COSLA task force recommendations, whether there would be any advantage in leaving the ombudsmen without enforcement powers, but allowing them to seek enforcement orders from the Tribunal in cases where they believed that councils' refusal to accept recommendations were sufficiently serious to merit further action.

203. Maladministration is not defined in law. The ombudsman must decide whether maladministration has occurred in the way in which an authority has taken a decision. This may include improper considerations or conduct; malice, bias or discrimination; unjustifiable delay; incompetence; or failure to establish proper rules or procedures where there is a duty to do so. A report will not usually identify the individual concerned but, if the ombudsman considers that the conduct of a member of the local authority has been in breach of the National Code of Conduct, that person must be identified unless there are specific reasons for not doing so. As noted earlier, however, while an individual may be identified in this way it is the council as a whole which will then be found guilty of maladministration.

204. The changes we propose would leave the ombudsman's role unaltered. It would still be for him to consider whether injustice had occurred as a result of maladministration, and to propose remedial action. But the background against which a case was examined would change slightly. Where a matter of conduct by a councillor came into question, the ombudsman would consider first whether the councillor's action breached the local authority's own code of conduct. An authority, responding to a finding of maladministration involving such a breach by an individual, would then have to consider not only what action to take to address the injustice caused, but also whether to take disciplinary action against the councillor concerned.

205. In addition, if maladministration giving rise to an injustice had occurred, yet the council's own code had been fully complied with, the ombudsman would have to consider whether the code itself was defective and, if so, whether to recommend improvements. It would not be the ombudsman's task to consider as a general matter whether the authority's code complied with the statute (ie achieved at least the same effect as the model code), but only to consider those specific aspects which bore on the complaint under examination. We propose that if the ombudsman considers the defect to be sufficiently serious, and the authority declines to make the changes recommended, the ombudsman should be able to refer the matter to the Local Government Tribunal for decision. If this occurred, the Tribunal would reach its own view, and it would be open to it to decline to order changes, or to order changes different from those proposed by the ombudsman.

206. We have mentioned above that we believe every council should have an effective internal complaints procedure, and we strongly support the practice now adopted by all the ombudsmen of referring back to councils those complaints they receive which have not already exhausted the council's own procedures.

207. We have also noted above that we believe that part of the way in which monitoring officers should fulfil their statutory duties to make reports on maladministration is by making an annual report to the full council on the operation of the internal complaints system. Such a report should cover not only complaints which have ended up with the ombudsman, but also those which have been dismissed, or successfully dealt with.

208. We have noted that further consideration is being given to whether the ombudsmen should be able to examine commercial and contractual matters, and we have no comments

on this. We agree that ombudsmen should not be able to consider personnel matters. However we note that it is generally believed that the ban on examining personnel matters extends to a ban on considering recruitment processes. We do not believe that this is, or should be, the case. Someone who has failed to be recruited by a local authority, and who believes that its recruitment practices are unfair, does not have access to the remedies open to an existing employee. Yet recruitment practices of local authorities can be the subject of much public suspicion, as occurred in the Monklands case, and it is best that they should be open to scrutiny through a recognised complaints procedure, rather than being examined only when public concern becomes so great as to warrant a major inquiry.

209. Earlier in this chapter we raised the possibility that the ombudsman might well be the recipient of complaints from local authority staff about matters of propriety raised under a whistleblowing scheme. If this were to be pursued, it might be necessary to ensure that the ombudsman has power to mount an investigation in such circumstances.

'It is Islington's view that there should be a clear distinction between corrupt behaviour, which would attract the attention of criminal law, and improper behaviour, which might be addressed by other routes, such as disciplinary proceedings involving disqualification or suspension.' ***Leisha Fullick, Chief Executive, London Borough of Islington***

'I conclude that an accountant, no matter how eminent in his profession, and however fair-minded, is ill qualified to act as if he were a judge and jury and be able to destroy lives, careers and families.' ***Ronald C M Raymond-Cox, Councillor, Westminster City Council***

'The first point to make about the surcharge system is that it is horribly protracted for those who are its possible targets. I also feel that the way the legislation is written at the moment suggests that in some way the local authority would be recompensed as a result of the surcharge arrangements, and I think that that is a false basis for what happens. In the event of significant losses, there is no prospect whatsoever, or very little prospect, of the local authority being recompensed as a result of the surcharge system.' ***Robert Barnett, Director of Administration and Legal Services, Deputy Chief Executive, Western Isles Council***

'I do not approve of the surcharge as a penalty because I think, again, it sits ill with the rest of the British justice system where the fine imposed upon individuals is seen as a retribution in some way. I would rather that if it got to that level of seriousness that it was taken over rather sooner by the courts rather than by the auditor.' ***Jake Arnold-Foster, Deputy Editor, Local Government Chronicle***

'It is not unknown for District Auditors, and indeed Section 151 officers [Chief Financial Officers], to make what amounts to threats to councillors, that if they adopt certain policies, they may be subject to surcharge. That is a pretty powerful threat to a councillor who just works for a living and has no financial backing.' ***Jean Geldart, Chair, National Local Government Committee, UNISON***

Audit and Surcharge

210. We have little to say about the external audit regime for local authorities. While there are a number of differences between England and Wales, and Scotland, the arrangements appear to us to satisfy the highest standards of propriety. In general, we found that local authorities were very satisfied with their overall relationship with the external auditors. There was some feeling that the district audit service provided a more penetrating scrutiny than private auditors, although we were not in a position to establish whether this was truly the case. We found slightly less sense of satisfaction with the regulatory bodies — the Audit and Accounts Commissions — though this had little to do with audit and could largely be attributed to disagreement with some of the observations made in value for money and other more general reports. By and large, however, the perception was that both bodies had responded to criticisms, and we ourselves were impressed with the evidence of both Commissions, which was among the most useful we received.

211. From time to time allegations of irregularities and misbehaviour within councils emerge. A number have done so while we have been conducting our study. Sometimes, as in Glasgow, these allegations emerge from the political process. Sometimes, as in Doncaster, they emerge as a result of the activities of the District Auditor. The cases of Lambeth and Westminster in London have also attracted wide publicity.

212. We do not regard the appearance of reports of irregularities as an indication of systematic weaknesses in local government financial management.

213. The Audit Commission told us in evidence that the level of identified financial misbehaviour **within** local authorities is very low, that most problems arise from attempted external fraud by members of the public, for example in the field of housing benefit, and that the auditors and local authorities are working together in a range of anti-fraud measures. Our recommendations below, in respect of one small but high-profile part of the relationship, must be seen against the background of a system that is generally effective.

FRAUD AND CORRUPTION IN LOCAL GOVERNMENT

The Audit Commission appoints auditors to 469 English and Welsh local authorities.

The 469 authorities have over 20,000 councillors and 2,000,000 employees. They spend over £50 bn per year.

In 1995/96 there were 1,475 proven cases of fraud and 21 cases of corruption affecting these authorities.

99% of total local government fraud (in terms of number of cases) is committed by outside persons against local authorities.

214. There were, however, some specific aspects of the financial regime which gave rise to much concern. This is particularly true of arrangements in England and Wales: the Scottish system differs in some significant particulars, although we have not set these out

in detail. The greatest concern was caused by surcharge. It is clear that local government, almost without exception, deeply resents the fact that local councillors and officers, alone among public office holders, are subject to surcharge. There was general acceptance that some form of ultimate sanction over standards of corporate behaviour was justified. Some of our witnesses felt that even surcharge could be justified if it was applied more widely, particularly to members of appointed bodies. Some officers argued that the threat of surcharge helped them to keep councillors in line. Some councillors said that the fact that they were liable to surcharge helped them to resist pressure to take improper action which emanated from party activists who were not councillors. But in general, the feeling was that surcharge was a deeply unsatisfactory and unfair mechanism.

215. We also received widespread criticism of the procedure followed in certain surcharge cases, under which the auditor formulates and prosecutes the case, judges guilt or innocence, and determines the penalty on the basis of his own calculations of financial loss. We can say immediately that we can see no justification at all for the retention of that particular procedure.

216. The Audit Commission argued in evidence for the retention of surcharge, even though it proposed significant procedural changes. It argued that surcharge followed 'the principle of restitution' which it said 'is consistent with much of English civil law.' It also noted, however, that surcharge was abolished in 1981 for civil service accounting officers, the only other group of public servants to whom it has applied, at least in recent memory. And the Commission pointed out that surcharge cases are rare — usually fewer than five a year, and sometimes none at all.

217. The Audit Commission also remarked on the significant difference between the operation of the auditor's powers in relation to alleged wilful misconduct or failure to bring items into account, and those which relate to alleged unlawful expenditure or unlawful actions. In the former case the auditor, and the auditor alone, has to decide whether wilful misconduct has occurred. If he so decides, he has no discretion. He must certify the sum lost and surcharge those responsible for that sum and no other. When dealing with alleged unlawful expenditure, on the other hand, the auditor has discretion to apply to the High Court for a ruling on whether unlawful expenditure has been incurred, and it is the court which decides whether or not to recover some or all of the amount concerned from those responsible.

218. The Audit Commission argued that the latter procedure should be adopted in all cases, namely that the auditor should make a case to the court. This could then be argued before the court, which would make a ruling and determine whether to order restitution of some or all of the sums involved, and whether to impose a disqualification. The Audit Commission also argued that the court should have normal powers to award costs.

219. Whether or not surcharge in theory is consistent with the principle of restitution may be arguable. We consider that, in practice, it is distinctly different. The surcharge regime is more in the nature of a penalty than a means of restoring property to its rightful owner. Surcharge applies in situations where the person being surcharged has not acquired any of the property of the local taxpayers. The taxpayers are confiscating the personal property of the person being surcharged in order to make good their losses. It is difficult to describe that as restitution. We are clear that surcharge is, quite simply, a penalty.

220. Unlike most financial penalties, surcharge bears no relation either to the means of the person being surcharged or the degree of culpability. The sums which may be judged to be lost in modern cases are likely to be well beyond the means of the individuals concerned, and indeed this was one reason why surcharge for Accounting Officers was ended. Where the entire sum is surcharged, the individual may well be bankrupted, and this has happened in recent years.

221. In certain cases the procedure allows the Secretary of State in Scotland (like the courts in England in cases of unlawful expenditure), to impose a surcharge of only part of the sum involved, or to impose no surcharge. But in such cases, there is no reason for relating the penalty to the sum lost at all: indeed any penalty imposed is more in the nature of a fine. If the sum lost is large, and the amount likely to be capable of recovery from the individual is small, it is likely that the surcharge will be remitted altogether, as it would otherwise appear that the sum being retrieved by way of 'restitution' is disproportionately small in relation to the sum lost. Bizarrely this makes it more, not less, likely, that there will be no penalty in cases where a penalty is, in fact, appropriate. We gained a clear impression in Scotland that there was a preference for the Secretary of State, rather than the courts, to continue to be responsible for the final decision on surcharge. This seemed to be because it was thought — correctly or not that a Secretary of State would be more likely than the courts to waive a surcharge, because a magnanimous gesture was more likely to be welcomed than a swingeing penalty.

222. Even if it were possible to bring the surcharge procedure more into line with equitable remedies, the concept still raises difficulties. The sums ordered to be repaid may sometimes be capable of precise calculation, but there may often be a considerable element of judgement in determining the actual loss to the taxpayer, and it may well be possible to calculate a sum in more than one way.

223. Our clear conclusion is that surcharge is an archaic penalty, which should be abolished and replaced, as an interim measure, with a procedure in which the auditor applies to the courts for a ruling, and the court has the power to order remedies of compensation and/or disqualification from office. The concept of restitution should remain where it belongs, in cases of **personal** gain. The courts should retain powers to ensure that anyone in a local authority who, as a result of improper behaviour, gains personally at the expense of the taxpayer can be ordered by way of a compensation order to make restitution of the sums involved.

224. We have considered whether a special tribunal, perhaps set up under the auspices of the Audit Commission, but coming within the rules of the Council on Tribunals, should deal with such cases. The Scottish system, where the Accounts Commission has hearings, has elements of this, although it is unsatisfactory that the Secretary of State in Scotland decides on penalties. We believe, however, that the Scottish and English systems should be aligned in placing the final decision with the court. The Secretaries of State should, however, retain their existing power to sanction expenditure retrospectively, so making it lawful.

Misuse of Public Office — A New Statutory Offence?

225. This reform would be welcome: but it does not go far enough. It would remove the inequity caused by the nature of surcharge, but would not address two other major inconsistencies of the present regime.

226. First, the statutory remedy of surcharge is only available where the conduct of a councillor or officer leads to financial loss by a local authority. The statute at present therefore covers the situation where relatively minor misconduct leads to a financial loss. But much more serious misconduct which does not lead to any loss is not caught. It is not only illogical that the statute should cover one situation but not the other, but it is wrong in principle.

227. Secondly, we have been left in no doubt, in the evidence we have received for this and for our previous reports, of the strength of feeling among those in local government who are subject to a powerful statutory regime for punishing misconduct which is serious but does not involve corruption. They are particularly concerned that a similar regime does not apply to others in the public service — even those providing a service which has previously been provided by a local authority. We fail to see any reason for this distinction.

228. There is an English common law offence of misconduct in a public office under which prosecutions are occasionally taken. We believe that a new statutory offence of misuse of public office should be developed from that common law offence. The key advantage of creating such a statutory offence would be that a clearer indication could be given in the statute of the circumstances in which an offence might occur; the limits would not have to be drawn by the jury without guidance.

229. It is illogical that those in local government should, uniquely, be subject to the statutory regime for punishing misconduct which is serious but does not entail corruption. We therefore believe that any new offence of misuse of public office should apply to all those in public service and not just to those in local government.

230. The whole of the law of corruption (including the legal position of bribery of Members of Parliament) is presently being considered by the Home Office. We believe that work on the offence of misuse of public office should go forward in parallel with those reviews. We are therefore publishing today, in parallel with this report, a consultation paper which sets out in more detail our thinking on the new offence, its scope, and to whom it might apply.

R27 Surcharge should be abolished and, pending the introduction of a new statutory offence of misuse of public office (R28), replaced with a procedure in which the auditor applies to the courts for a ruling, and the court has the power to order compensation and/or impose disqualification from office.

R28 Subject to further consultation, there should be a new statutory offence of misuse of public office, which would apply to all holders of public office.

Other Financial Issues

231. Although little has been said on this in evidence, the auditor's 'stop' power — his power to issue a prohibition on unlawful action — is also questionable. This involves the auditor taking a view on the legality of expenditure, not its financial propriety, and imposing his judgement over that of the council and its legal advisers.

232. The stop power was clearly introduced in a particular political climate, rather than as part of a logical structuring of powers and sanctions. We have had evidence of situations where different auditors have taken different views on similar matters, and where some have sought to impose their views in the face of counsel's opinion obtained by the local authority that the expenditure was legal. This is patently an unsatisfactory situation. Moreover it is not necessary, nor is it conducive to good governance: the system in Scotland works perfectly well without it.

233. In this, as in other matters, the district auditor should have the right to commence action, but not to impose his judgement. The stop power could best be replaced with the equivalent of an Accounting Officer minute, addressed to the council. This would have to be considered by the full council, along with its own legal advice and appropriate internal reports. The council would then take its decision in the full knowledge of all the legal advice, external and internal, and councillors who defied clear legal advice would have to bear any consequences. We believe that this system could be operated under present legislation.

234. The Audit Commission raised with us another local authority audit matter: the right of electors to object to local authority accounts. It is clear from evidence received from local authorities that this important right has been abused in a number of ways:

- by electors who use it to challenge a decision with which they do not agree, regardless of its financial implications;
- to seek redress for personal grievances where the ombudsman has missed a complaint, or in parallel to such a complaint;
- by private contractors seeking commercially useful information about an authority's operations.

235. The right of challenge must be retained as a form of accountability by local authorities. We agree, however, that trivial or vexatious objections, which may involve a local authority (and its taxpayers) in considerable costs, should be weeded out. We therefore accept the Audit Commission's view that there should be:

- a power for auditors to refuse, for good reasons, to hear objections (subject to a right of appeal) if for example, they consider the objection vexatious or dentical to one previously dealt with;
- a limit on the period of time within which objections can be raised;

- a simpler and faster process, possibly doing without oral hearings. The auditor might be empowered to set time limits for submission of evidence. It might also be possible to avoid the complexity of the present process in which the objector acts as prosecutor;
- a power for the auditor to award reasonable costs.

R29 The District Auditor's 'stop' power in England and Wales should be discontinued and replaced with a system of formal warning notices.

R30 The right of a local elector to challenge an authority's accounts should be recast to avoid abuse of the process.

Chapter 5

Working with Others

> *'The opportunities for corruption are growing with the spiralling trend towards devolution of management responsibilities and greater direct provision of services by private sector organisations (with the role of local authorities being confined to the specification, letting and monitoring of contracts)'. D J Bartlett, Honorary Secretary, The Society of London Treasurers*
>
> *'The gradual erosion of ethical values in day-to-day business transactions, and the dominance of internalised quasi-market considerations in place of an externally focused sense of the public good, are two trends which the Council has fought hard against in recent years'.Henry Peterson, Director of Policy and Administration, Hammersmith and Fulham*

236. The increasing complexity and diversity of the means of provision of public services is a matter we have noted in our first two reports. In local government, this complexity is brought about in a number of ways. These include:

- the contracting out of services through Compulsory Competitive Tendering (CCT);
- the establishment of joint ventures with others in the public sector, the private sector or the voluntary sector;
- through local authority companies;
- through management buy-outs (MBOs) by members of staff of the local authority;
- and by other forms of contractual relationship with the private, public and voluntary sectors.

237. The partnership arrangements which local authorities have developed in recent years have been extremely successful in many cases. We wish to draw attention, however, to a number of problem areas which have emerged.

Compulsory Competitive Tendering

238. Under the previous government, compulsory competitive tendering (CCT) was steadily extended throughout local government. It was first introduced for construction, maintenance, and highways work in 1980. It was extended to other blue collar services such as refuse collection and ground maintenance in 1988, while sport and leisure management was added as a further defined activity in 1989. In 1994, yet more blue collar activities were added, as were housing management, legal and construction and property services. In 1995, information technology, finance, and personnel services were included.

In 1996, the Department of the Environment issued a consultation paper toughening up the regime for professional services and housing management. This was further tightened up with new regulations early this year. Ministers have now announced that they intend to replace CCT with a duty of best value on local authorities and in the mean time an urgent review of CCT is being undertaken to improve the way that it works. Statutory guidance has been issued on the key principles of good tendering practice in CCT.

239. Under CCT, transfers of operations to the private sector may involve considerable transfers of staff. This can create difficulties of conduct, either through conflicts of interest for staff being involved both in contract preparation and subsequently as a contractor; or with staff moving from an incumbent contractor (in- or out-house) to another organisation which may subsequently tender for the same contract.

Joint Ventures and Local Authority Companies

240. There are also official guidelines in relation to a number of other areas. For example a joint Department of the Environment/Welsh Office circular deals with local authority companies. Part V of the Local Government and Housing Act 1989 describes the circumstances in which a company could be considered as either 'controlled' by a local authority (a majority of voting shares or the appointment of a majority of directors) or 'influenced' by a local authority (20% of voting shares or directors). The legislation allows for the Secretaries of State to regulate the actions of a local authority in respect of companies which either it controls or in which it has an influence.

241. Local authority companies may be used to take forward particular policy objectives of the Council, either directly or through joint ventures with the private sector. They are sometimes set up to bid for and oversee the use of grants both from central government and from the European Union. Therefore such companies are handling the expenditure of substantial sums of public money. It is of particular importance that rules of propriety and audit are effective in dealing with them.

The Issues

Public Audit

242. Commenting on the changes that have taken place in the provision of local authority services and in particular the growth of Compulsory Competitive Tendering, the Audit Commission told us:

> *'not all the consequences of this revolution [CCT] have yet been assimilated into the systems of controls over the use of public money. The principles of good stewardship of public funds are timeless but their application needs to fit evolving circumstances. Controls need to deal with today's risks in a way that does not discourage innovation and improvement in public services'.*

243. We agree with the Audit Commission's view on public audit. We believe it is essential that they, or the Accounts Commission in Scotland, should be able to comment, in the public interest, on the use of public money. As we said in our first report

> *'We believe that the propriety of all public expenditure should be capable of review by the appropriate public auditing body'.*

244. We would expect that the work that the Audit Commission and the Accounts Commission in Scotland carry out as part of their audit of local authorities will continue to enable them to identify, and comment on, any areas where they believe they have insufficient access to records of the expenditure of public money. We welcome the steps that have been taken by the government to examine the issues of audit following comments we made in our first two reports. Amongst other things, this has resulted in a clearer understanding of the role of public audit and a proposal to establish a public audit forum which can provide a focus for developing thinking on public audit. The Treasury has indicated its willingness to participate in the forum and to undertake to pay close regard to its work.

245. As we said in chapter 4, the district audit service is of central importance in identifying and drawing attention to improper behaviour in local government and in services delivered on behalf of local government. That does not remove responsibility for related bodies from local government. Not only must local government ensure proper use of public money by these bodies, it is essential that it maintains a wider guardianship role. We spelt this out as one of two 'fundamental propositions' in our second report:

> *'Where a citizen receives a service which is paid for wholly or in part by the taxpayer, then the government or local authority must retain appropriate responsibility for safeguarding the interests of both user and taxpayer regardless of the status of the service provider.'*

246. Where local authorities are concerned, that means in our view that it is necessary to have regard to more than value for money. In addition to the usual financial oversight, the local authority must take an interest in ensuring that recipients of the service are treated fairly and properly in accordance with whatever criteria for service provision are set out; that people know where to address enquiries and complaints; that there are proper procedures for dealing with these which are subject to some oversight; and that the management of the publicly supported part of the activity is conducted according to standards of conduct which are in line with the principles set out in the Cadbury report into corporate governance. The extent of local government responsibility in this area must, of course, be proportionate to the amount of public funding, the importance of the service to the recipients, and the extent of the publicly funded activity in relation to the overall activities of the service provider. An important role of the auditor should be to comment on whether the scale of the local authority's supervision and monitoring of contracted out or partnership activities is appropriate.

247. This wider guardianship role is of importance in relation to complaints procedures and the ability of staff to raise concerns about improper behaviour through a confidential route.

Liability

248. As we have noted, there is increasing awareness of the potential risks and liabilities which may be incurred by local authority representatives serving on other bodies, and of the need to address possible conflicts of interest in such situations. We have already set out our views on the treatment of conflicts of interest within the council, where we believe that it is important that councillors (and officers) who serve on outside bodies should not be inhibited from participating in discussions in the council which touch on its relationship with those bodies, so long as the interest is declared and the councillors concerned refrain from voting on contract and funding matters.

249. However, conflicts of interest can also arise for council representatives, as a result of their responsibilities to the council, when they are taking part in the affairs of the outside body. The responsibility of the council representative, in respect of any action taken as a board member or trustee of an outside body, will be to the body in question, and in certain circumstances a representative who acts otherwise could well be put at risk of incurring some personal liability if the body runs into difficulties.

250. It is not possible to detail here all the circumstances in which problems may arise. We are at present conducting a factual study of the legal framework in relation to liability, which we hope will clarify the situation. But we consider that it is incumbent on every council which either appoints representatives to outside bodies, or accepts as a de facto representative a councillor or officer who is approached by an outside body and agrees to serve on that body, to give legal advice to the representative both on appointment and subsequently if asked or if it becomes apparent to the council that problems may arise. In particular, the representative should be made aware of the responsibilities and potential liabilities being taken on, and of any specific statutory duties. Advice should also be given on possible courses of action in the event of a conflict of interest arising, bearing in mind that the body in question may have its own conflict of interest rules.

251. In view of the doubts which can arise in respect of indemnities offered by councils in these circumstances, we also recommend that councils should generally require bodies to which they appoint representatives to take out indemnity insurance for board members. This must involve an element of judgement about proportionality: it would be appropriate for most trading organisations, or for partnerships involved in major projects, but not for community groups. Many established bodies will have such insurance. For example, the National Housing Federation has a block policy for all its member Housing Associations. This may be an issue which requires particular attention by the council in the event of one-off joint ventures.

Joint Ventures

252. There is no doubt that, quite aside from the special problems of CCT, a substantial amount of contracting out of day-to-day services is likely to continue for the foreseeable future. In addition, local authorities will increasingly be participating in joint ventures: sometimes through arms-length partnerships, sometimes through local authority companies of one kind or another. There are many situations where local authorities make

grants to not-for-profit bodies. We have noted that a number of problems have occurred in such cases, and we took particular account of evidence presented to us about the case of two local authority officers in Waltham Forest who have found themselves placed in a most invidious position when acting on behalf of the local authority, and in pursuit of what the local authority perceived at the time to be their duty, as directors of a joint-venture company which failed.

253. We believe that, as a result of this and a number of other cases, local authorities, auditors and the professional and regulatory bodies are becoming increasingly aware that joint ventures bring risks as well as advantages. In Scotland, the Accounts Commission and COSLA drew our attention to their 'Code of Guidance on Funding External Bodies and Following the Public Pound', which sets out principles for ensuring propriety and regularity in such bodies, and for achieving appropriate management arrangements. The Code warns of the need to limit the council's financial exposure and to ensure that any council representatives clearly understand the risks and responsibilities of their position. The Audit Commission in England referred to work it has done on value for money in such arrangements, and to the link with propriety issues, while CIPFA drew our attention to its continuing work in drawing up standards in this area. We are pleased to note that the government intends to publish a consultation document later this year addressing the problems local authorities may encounter in this area.

254. For the most part, the safeguards required in partnership working are those which relate to safeguarding public money, and achieving value for money. These include separating responsibility for different stages in approving and awarding contracts, and in making and authorising payments; written agreements; target setting; minimum standards for accounting, auditing and management arrangements; and monitoring of financial, performance and output data. These are matters in which the auditing and accountancy bodies have great expertise, and we do not seek to duplicate their existing and excellent work. We do believe, however, that it is important to ensure that up to date advice continues to be available to authorities in these areas. We particularly commend CIPFA's efforts to encourage joint working in the production of best practice guidance, and we urge the responsible bodies in England to work together to produce agreed and authoritative guidance in the same way as has happened in Scotland.

Management buy-outs (MBOs)

255. The Audit Commission has drawn to our attention one form of service provision that may raise special problems. It has particular concerns about management buy-outs in which companies are formed by employees of a local authority to provide a specific service. This raises two issues: risks associated with the establishment of the management buy-out company and continuing risks as contracts come up for renewal. The Audit Commission has published a paper on this issue, '*Management Buy-outs: Public Interest or Private Gain*' in which it recommends a number of safeguards which we would commend as examples of good practice. The Audit Commission's recommendations are set out in the box on page 64.

BEST PRACTICE GUIDELINES FROM 'MANAGEMENT BUY-OUTS: PUBLIC INTEREST OR PRIVATE GAIN'

Officers should express their interest in undertaking an MBO as early as possible.

After being informed of such an interest, authorities should try to organise themselves so that officers are not placed in a role where they could be seen to have a conflict of interest.

The divesting authority should seek professional advice in valuing the business and negotiating the buy-out. This includes professional advice on asset and goodwill valuation and on the commercial viability of the proposed company.

Authorities should undertake financial evaluations of the MBO company in the same way that they would of other companies tendering for such work.

Contracts should either be awarded to the MBO company for two years or less or there should be open competition from day one (accepting that the MBO will not happen if it is unsuccessful in winning the contract).

If, because of local circumstances, an authority proposes to award a contract to an MBO company without competition, but for more than two years, then it should take extra steps to ensure that it is achieving value for money, for example including rights for auditors to review value for money in the MBO's services.

The MBO company should be subject to the same level of client-side monitoring of its operational performance as would be applied to other contractors.

Complaints procedures

256. All the local authorities we visited and from whom we took evidence had well-established internal complaints procedures. More problematic is the extent to which those in receipt of a service can find an adequate route of complaint where the service is provided under contract to the council by an outside organisation (whether in the private sector, another part of the public sector, or the voluntary sector).

257. A number of such contractors have sought to apply for the government's Chartermark Award for public services. In order to be eligible for such an award a contractor would have to be able to provide a well publicised complaints procedure. We believe that whether or not they are seeking a Chartermark, large contractors, which are delivering services to the public, should as a matter of good practice have their own such procedures in place. We recognise however, that not all those providing services to the public under contract to local authorities will be large organisations. In such cases, local authorities should make arrangements with the contractor to handle complaints through its own complaints system in respect of the contractors' services. In any event, the fact that

a contractor has a complaints system of its own should not prevent the local authority's complaints system being able to handle a problem where the complainant was dissatisfied with the response from the contractor.

R31 Local authorities should ensure that people who receive services through a contractor to the local authority have access to a properly publicised complaints system.

258. We commented in chapter 4 about the importance of whistleblowing systems in local government. We have considered whether it would be realistic to recommend that organisations tendering for local authority services should be required, by a contract term, to have their own confidential mechanisms for reporting malpractice. The existence of such a mechanism is now considered best practice within the private sector and we would not wish to discourage organisations tendering for local authority contracts from putting their own systems in place. We recognise, however, that in the short term the existence of such procedures will be the exception rather than the rule. We therefore believe it is important that local authorities should seek to provide, through their contracts, access to their own internal whistleblowing procedures for the staff of contracting organisations. This could involve requiring the contracting organisation to declare, as part of the contract, that any confidentiality clauses relating to its staff should not apply in relation to a formal reference by that member of the staff to the council's internal whistleblowing procedures.

R32 Staff of contracting organisations should have access to the local authority's whistleblowing procedures.

'A combination of mid-career changes and early retirement has launched a skilled and potentially predatory class of knowledgeable senior local authority managers into the market place. Their skills and knowledge, gained in a local authority setting, are not only potentially of advantage to any new employer organisation offering them a job, but also potentially to the disadvantage of their former local authority.' David Winchurch, Chief Executive, Walsall Metropolitan Borough Council

'We believe that there are many examples of officers who have been responsible or very closely involved in the award of contracts to private sector organisations or in the award of grants to voluntary organisations who, shortly after the decision of the authority concerned, have then taken up employment with those organisations. Most members of the public would clearly regard that as an abuse. We believe it is one that should be prevented and we believe that it is capable of prevention and capable of being policed at the local level.' Steven Bundred, Member, Society of London Treasurers, and Chief Executive, Camden Borough Council

'I think it is an illustration of the potential conflict situation, inasmuch as it may tempt certain officers, or members also for that matter, to promote the contracting out of services with a view to their taking positions in it. That is the danger. How real a danger it is, I do not know, but it is around sufficiently for a mechanism to be required to test it.' Sir Jeremy Beecham, Chairman, Association of Metropolitan Authorities (now Chair, Local Government Association)

The Movement of Staff

259. The potential difficulties of local authority officers moving to the private sector have been recognised for many years. The Inquiry into Conduct in Local Government under the Chairmanship of Lord Redcliffe-Maude said:

> *'It is not uncommon for employees on retirement or resignation to enter private practice in the authority's area, for example as solicitors, architects, or planning consultants. There are two dangers here. One is that the employee takes with him into private practice a knowledge of the authority's policies or procedures which gives him and his clients an improper advantage over their competitors. The other is that in the final period of his employment by the authority he may be tempted to govern his actions in the light of his prospective subsequent employment'.*

260. The Report went on to recommend the establishment of business appointments rules for local government officers analogous to those for civil servants.

261. Much of the work of Redcliffe-Maude was reviewed two years later in 1976 by the Salmon Commission on Standards of Conduct in Public Life. On business appointment rules, the Salmon Commission said

> *'The weight of evidence that we have received from the world of local government and from other parts of the public sector is however to the effect that such requirements would be unenforceable in practice. It was also suggested to us that some rules might have some undesirable effects particularly in damaging the recruitment of professional staff. We make no recommendation in respect of local authorities and other public bodies who should, in our view, appraise their own needs in this field'.*

262. The situation has of course moved on considerably from the time of both Redcliffe-Maud and Salmon. The Transfer of Undertakings (Protection of Employment) (TUPE) regulations, which come into play during the process of CCT, almost invariably mean transfers of staff. In those circumstances any bar on transfers becomes a nonsense. A separate issue does however arise: the question of staff moving to the private sector to help in the preparation of a bid for local authority business. Taking these changes into account we believe the time has now come to provide greater clarity about the position of staff moving from local authorities to contractors and potential contractors by tackling the issue across local government.

263. We have considered whether some formal business appointment rules like those in the Civil Service are required. The devolved nature of local government would make such rules difficult to set up, possibly cumbersome to operate, and create the danger of an inconsistent approach. We also have sympathy with the views of those who gave evidence to the Salmon Commission that such rules would be unenforceable in practice. We have therefore looked at alternative approaches.

264. A number of local authorities have experimented with 'restrictive covenants' in the contracts of senior staff limiting their activities on leaving office. The Local Government

Management Board (LGMB) has provided advice to local authorities on the adoption of such covenants. The LGMB makes the following points:

> *'Conditions of Service*
> *Consideration is currently being given nationally to a range of issues arising from the wish to prevent ex-employees using knowledge acquired while in employment to the detriment of their former employer. This is particularly relevant and topical in the context of white-collar CCT and the externalisation or 'trade sale' of services to the private sector for those on the 'client' side.*
>
> *Such 'restrictive covenants', as they are sometimes known, raise difficult issues of law and the courts have sometimes been reluctant to enforce them rigorously. Where they have been upheld, this has often been for very limited periods and within geographically and/or commercially restricted areas. Moreover, to add such restrictive covenants to the contracts of serving employees must involve their individual consent.'*

265. We understand the argument that the use of restrictive covenants in these circumstances could be an unfair restraint of trade. While it must always be for the courts to decide the facts in an individual case, we believe that any restraint should be balanced against wider considerations of probity in public life.

266. The LGMB offers a draft restrictive covenant:

LGMB EXAMPLE OF A RESTRICTIVE COVENANT

You hereby undertake that you will not during a period of [12] months immediately following termination of your employment with [employer]:

a) solicit business from or canvass any client* in respect of Restricted Services†

b) supply Restricted Services to any client

c) solicit or induce anyone employed in a managerial capacity by [employer] when your employment with [employer] terminated to cease working for [employer]

These provisions would not apply if the termination of your employment with [employer] arose as the result of the externalisation of your work and your consequent transfer to a new employer.

* *any person or organisation with which [employer] did business in the twelve months before the termination of your contract and with whom or which, during that period, you had personal dealing in the course of your employment.*

† *any services, including the transmission of knowledge and advice, which are the same or similar to those supplied by [employer] and for which you were responsible or with which you were directly involved in the twelve months before the termination of your contract.*

Legal advice should be taken before incorporating any such clause into contracts.

267. A further approach is offered by the Society of Local Authority Chief Executives (SOLACE). They suggested that tenderers for council work should be required to declare the name of any member of their staff who has worked for a local authority to whom the bid was being made. The contractor would also be required to confirm in the tender submission that any such persons had not taken part in, or advised on any part of the work connected with the submission of that tender. Failure to observe this requirement could render any ensuing contract void.

268. Both the use of restrictive covenants and the SOLACE approach have attractions. They do not involve the construction of a bureaucracy to manage the appointments process; and they allow each case to be determined according to the particular circumstance. Although the use of covenants and contract terms is relatively new and has not been tested in practice, we believe it is the approach that provides the most likelihood of tackling the difficulties.

R33 Local authorities, which are concerned about conflicts of interest when staff move to the private sector, should consider the introduction of restrictive covenants, or stipulations in the contracting process, to avoid conflicts of interest.

Chapter 6

The Planning System

Introduction

269. We have received more letters from members of the public about planning during our work on local government than on any other subject. Planning is clearly a subject that excites strong passions and for good reason. The planning system frequently creates winners and losers; it involves the rights of others over one's property; the financial consequences of a decision may be enormous.

270. The value of agricultural land is generally much lower than that of land with planning permission for development, while the overall value of a proposed development may be such that for the developer the potential gains justify very intensive efforts to secure planning permission, with consequential abortive costs in the event of a refusal. Equally, the impact of planning decisions on the local community is both direct and visible, and councillors can come under great pressure to favour particular local interests, and to take into account matters which are not relevant for planning purposes.

271. Many letters raised individual cases and allegations which fall outside our remit, although they were important as background to our work. Others involved observations on planning policy which dealt with matters other than conduct. A substantial body of correspondence, however, recommended changes to the present procedures on the grounds that there were gaps in arrangements which led to misconduct or the suspicion that misconduct might take place.

272. As well as the material which was sent to us, and the witnesses from whom we heard, we were able to draw on previous inquiries into planning matters in a number of authorities[7] . We found these reports very useful, because they were based on the detailed study of the operation of planning committees and officers and used their findings to make recommendations of a general nature. A recent survey into the part played by councillors in planning control, carried out by Oxford Brookes University for the Royal Town Planning Institute, contains much interesting material[8] . We also took evidence in public from the authors of the reports into planning in North Cornwall DC and Bassetlaw DC, as well as representatives of the development industry, conservationists, and local and central government planning experts.

7. 'Independent Inquiry into Planning Decisions in the London Borough of Brent', 1991; 'Enquiry into the Planning System in North Cornwall District', 1993; 'External Enquiry into Issues of Concern about the Administration of the Planning System in Warwick District Council', 1994; Report of an Independent Inquiry into Certain Planning-related Issues in Bassetlaw, 1996.

8. 'The Role of Elected members in Plan making and Development Control', RTPI 1997

'The Government recognises and upholds the rights of property and the privileges of ownership. Owners of land and property properly expect to be able to use or develop their land as they judge best unless the consequences for the environment or the community would be unacceptable.' Department of the Environment, Planning Policy Guidance (PPG) Note 1, paragraph 36

'The problem is that there is a fundamental misunderstanding by many people about the planning arrangement. People are not given planning permission as a privilege. They are refused planning permission with regret. It should be seen that way round.' Rt Hon John Gummer MP, Secretary of State for the Environment

'In Victorian times politicians wanted to be known by the development they promoted ... and by the self-sufficiency of their local community. Modern politicians want to be known by the development they prevent and the amount of other people's money they pull in by way of grant, and that is a fundamental difference in approach.' Dr Ian Roxburgh, Director of Planning and Environment, George Wimpey plc

'There is little doubt, but minimal hard evidence, that council officers work closely with developers. Parish councils, local people, and environment protection bodies are seen as tiresome objectors to be ignored. Elected councillors, most of them with little knowledge of planning or highway regulations, are easily manipulated.' Major G W Lamb, former Somerset County Councillor

Public Confidence and Understanding

273. We have said in our previous reports that public perception of impropriety is as important as the existence of genuine misconduct. People are, of course, more likely to write to us if they are discontented. Nonetheless, public satisfaction with the planning system does not seem to be particularly high. Apart from our postbag, nearly 25% of ombudsman cases concern planning. Anyone who reads a local paper on a regular basis can confirm the strong, sometimes violent, passions that can be aroused by a major planning application.

274. Most local authorities said firmly that the incidence of corruption in the planning system was very low. If corruption is understood as money changing hands between individuals, that statement may be true, although it is impossible to give precise figures. Nor would that exclude decisions being taken on the basis of personal friendship or shared interests, rather than for proper planning reasons.

275. The reports into planning in local authorities mentioned above, however, show that planning can be distorted in other ways: by a desire for social engineering; by a prejudice in favour of a particular group in the community; or by a need for community facilities. Any of these aims, in proportion, can be praiseworthy: but if they trump all the other relevant planning criteria then public confidence in decision-making is likely to be a casualty.

276. A shift in public opinion has also contributed to a decline in confidence in the system. Since its inception in 1947, the planning system has carried a general presumption **in favour** of development. This is natural enough. The owner of a property has a right to exploit it which should be restricted only where necessary in the public interest. In 1947, moreover, the need for post-war reconstruction was clear. Development enjoyed broad public support.

277. The climate of popular opinion has now changed. 'Development' is now a term which has a pejorative ring, and the planning system is seen by many people as a way of preventing major changes to cherished townscapes and landscapes. If the system does not achieve this (and it is a role which it was not originally designed to perform), then the result can be public disillusionment.

278. There is little that we can do about this directly, as it raises wide policy questions. We have therefore chosen to focus on the areas that seem to cause most impropriety, or public suspicion of impropriety. We believe that some progress can be made.

279. The areas which we have considered in detail are:

- the roles of councillors and officers in the planning process;
- best practice in planning procedures;
- planning gain (planning obligation);
- the independent scrutiny of planning decisions.

The Roles of Councillors and Officers

> *'The members of a local planning authority are elected to represent the interests of the whole community in planning matters.' PPG 1, paragraph 60*

280. Councillors exercise, quite properly, two roles in the planning system. They determine applications, arriving at a decision on granting or refusing permission by using planning criteria and by excluding non-planning considerations[9] . They act also as representatives of public opinion in their communities. Planning is not unique in this respect. Determining licensing applications is a similar process.

281. There has always been some tension in the dual role, but it was minimised when public opinion was (broadly) in favour of, or at least neutral to, development. The tension has however become much more acute as opposition to development projects has grown. As politicians, local councillors must listen and be responsive to the views of their constituents. As members of the planning committee, they must make a decision using only planning criteria. This may be a delicate balance to achieve.

9. 'In principle ... any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances.' (Stringer v MHLG 1971, cited in PPG 1 paragraph 50.

282. One approach to this difficulty might be to reduce the scope of councillor involvement in the planning process by seeking to insulate members from anything associated with an application bar the final decision. Some of the recommendations in recent reports into problems with the planning system (referred to above) take this line. They have concentrated on tightening the procedural guidance relating to the handling of objections, contact with applicants and objectors, the nature of the planning officer's report, the handling of the meeting, and the recording of decisions.

283. For example, it has been suggested that councillors should be excluded from pre-application discussions; site visits should be restricted; officers' recommendations should be overturned in only the most exceptional circumstances; councillors should have to register in writing all discussions which they have with anyone regarding an application and so on. That is an approach favoured, not surprisingly, by the professional planning bodies and officer associations.

284. The same point of view has influenced the drafting of a national code for handling planning applications, which has involved professional bodies, local authority associations, and the Department of the Environment.

285. The result is well-intentioned but creates immense difficulties:

- it is influenced by the notion that planning is a 'quasi-judicial' process in which councillors are akin to judges handling a court case and must therefore avoid expressing opinions about planning generally or particular applications in case they are seen to be pre-judging an issue. It is true that the process of arriving at a planning decision has similarities to a legal process. Yet the difference between judges and councillors is obvious. Councillors are leading local political figures who naturally have strong views on development proposals affecting their council: indeed, they might have been elected for precisely that reason. A series of important recent legal judgements has now exploded the 'quasi-judicial' argument[10];
- the assumption seems to be made that councillors cannot be trusted to arrive at a sound decision or, more insidiously, that they are more likely than officers to succumb to corruption and improper influence;
- 'planning is not an exact science'. There is no 'right answer' which can be applied to a planning application: there is always a balance between various planning criteria. Providing elected members are fully and properly briefed, they are particularly well-equipped to make planning decisions because of their representative role, not despite it;
- attempting to divorce the political role of councillors from their planning function is unlikely to succeed. It is also undemocratic and impractical to try to prevent councillors from discussing applications

10. R v Amber Valley DC ex p Jackson (1985) 1 WLR 298; R v Secretary of State for the Environment and William Morrison Supermarket plc ex p Kirkstall Valley Campaign Ltd (1996) JPL 1042; R v Hereford and Worcester CC ex p Wellington Parish Council (1996) 94 LGR 159.

with whomever they want: local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue, but in an underhand and covert way.

> *'Not all decisions are technical. If they were, the human face of planning could be eliminated and no democratic discussion ever take place once policies were decided. Officers could just press the relevant computer key to make the decision.' Chair of an English District Council Planning Committee, quoted in RTPI survey*

286. It should be firmly stated that there is nothing intrinsically wrong if planning committees do not invariably follow the advice of officers. Planning officers exist to **advise** planning committees, which are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to an application. If a decision is thought to be perverse, a planning officer should so advise the committee, but respect the committee's conclusion.

287. We understand that in some authorities, if a planning committee rejects an application against officer advice, and the applicant then appeals, there is some reluctance on the part of officers to act on behalf of the authority at the appeal: in some cases independent consultants have to be hired to do so. This reveals a profound confusion about the duties and responsibilities of a professional officer within an authority, as well as being a waste of taxpayers' money. Unless an officer believes that a planning decision is improper (in which case he or she should draw this to the attention of the council's solicitor or chief executive), the correct course of action is to provide the best planning arguments to support the council's case.

288. It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the councillors themselves. Councillors owe their position to the electorate, and in the decisions they take they are, by and large, attempting to serve the community which elected them. More specifically, they cannot put out of their minds the plain fact that in order to be re-elected they have to secure sufficient votes from the electorate. Such considerations naturally lead councillors to be concerned for the particular circumstances of individuals, perhaps to be more sympathetic to those who have a good track record in the community, and certainly to be influenced by the strength of opinion in one direction or another, whether or not the strong local views are held for a good planning reason.

289. Councillors themselves may be influenced by feelings which do not derive from dispassionate examination of the planning issues. They may see themselves as leaders of local opinion rather than as judges, and they may even have been elected on a specific platform of opposing or supporting a particular development or type of development. In our view, if planning decisions by local authorities were to be regarded as quasi-legal decisions, in which councillors played a role similar to that of inquiry inspectors or judges, there would be no point in involving councillors in such decisions. They might as well be taken by planning officers, or by inspectors.

290. It is significant that planning decisions are taken in committee or in council, not by councillors sitting as any form of court or tribunal. Planning decisions are not legal judgements. They are administrative decisions, taken within a framework of law and practice, and this view has been upheld by the courts. The effect of this is not that planning decisions are freed from legal constraint, but that the constraints are different. Decisions must still be free from bias caused by personal interest. But in our view they need not be decisions which are taken judicially, based solely on a rational and impartial assessment of evidence. On the contrary, councillors must bring to planning decisions a sense of the community's needs and interests. That is why they are there. Theirs is the sometimes difficult task of marrying their duty to represent the interests of the community with their obligation to remain within the constraints of planning law, and only to take account of relevant matters. If they do either to the exclusion of the other they are equally at fault.

291. We have therefore chosen to approach planning by accepting and understanding the duty of elected members to listen to their constituents. With this goes an expectation that the vast majority of members will behave properly if they have the support of best practice guidelines and training — and effective external scrutiny if misconduct is suspected.

292. Councillors should not be left to sink or swim. Planning legislation and guidance is complex and it is essential that councillors have adequate training to enable them to apply the rules in a proper way to applications. Officer advice, however excellent, cannot be a substitute.

293. The recent RTPI survey found that practice in authorities varied widely , ranging from frequent training to none at all, although planning committee chairs and their deputies had a reassuring level of expertise. Ignorance can be dangerous, as the independent inquiry into planning decisions in Bassetlaw DC found. A contributory factor to poor decision-making was the high turnover of members of the council's planning sub-committee, allowing a number of perverse decisions to be made with little challenge. We believe that basic training in the planning system, preferably provided by experts drawn from outside the authority, should be compulsory for members of the planning committee.

R34 All members of an authority's planning committee (or equivalent) should receive training in the planning system, either before serving on the committee, or as soon as possible after their appointment to the committee.

294. We recognise, of course, that in planning, as in other areas of local government and public life, not everyone will understand or abide by rules of conduct. Indeed, since huge profits may turn on a planning application, the risks may be greater there than elsewhere. A robust and effective system of checks and balances should be in place to reassure the public that misconduct is kept to a minimum.

Best Practice in Planning Procedures

'I believe very strongly that there is scope for obliging local authorities, particularly planning committees, to give reasons where they reject professional recommendations.' Elwyn Moseley, Local Government Ombudsman for Wales

'You are never going to stop an applicant for planning permission speaking to his local councillor. That is bound to happen. It is a matter of educating the councillor as to how he should deal with that when it happens and if it is a question of the developer seeking to give information then all of the council members should have access to that information. It should be done in a formalised way, perhaps with officers present, and recorded and publicised.' Derrick Marks, Commissioner for Local Administration in Scotland

One thinks of a councillor in a village who is perhaps lobbied at coffee after church by somebody who has put in a planning application for an extension to their house. Again, if all of that has to be recorded and reported to the committee it places too great an emphasis on the issue. It is how the councillor responds to the approach that is important and that is where clear guidance is needed.' Anthony Slack, Member, Royal Town Planning Institute, and Borough Planning Officer, Ashford Borough Council

295. Although we believe that the logic underpinning recent attempts to produce codes and procedures for planning committees is faulty, there is no doubt that a core of best practice can be defined which retains the proper role of both councillors and officers. We have therefore drafted some basic rules of best practice. We do not claim any originality for these: all of them have been mentioned in one or other of the reports or codes cited earlier in this section.

CODE OF BEST PRACTICE IN PLANNING PROCEDURES

Members and officers should avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants and objectors

There should be opportunities for applicants and objectors, and other interested parties such as parish councils, to make presentations to planning committee

All applications considered by planning committee should be the subject of full, written reports from officers incorporating firm recommendations

The reasons given by planning committee for refusing or granting an application should be fully minuted, especially where these are contrary to officer advice or the local plan

Councillors and planning officers should make oral declarations at planning committee of significant contact with applicants and objectors, in addition to the usual disclosure of pecuniary and non-pecuniary interests

No member should be appointed to planning committee without having agreed to undertake a period of training in planning procedures as specified by the authority

296. Most of these rules are self-explanatory, and are based on procedures already existing in many authorities. Giving an opportunity to applicants and objectors to speak at planning committee meetings is still far from being a universal practice (in place in about 25% of authorities in the RTPI survey), and there may be practical difficulties, yet it seems to us to be a very useful way of restoring and building public confidence in the planning system. (It may also reduce the amount of direct lobbying of members and officers). That view was confirmed by those authorities which have introduced it.

297. Some aspects of best practice would need further definition within the council's own code of conduct (for example 'significant contact' with an applicant or developer may need spelling out in relation to local circumstances).

298. We have had other, more restrictive proposals put to us, which also reflect recommendations made by the various planning inquiries. For example:

- requiring councillors on the planning committee to refrain from expressing an opinion on any planning application likely to come before them;
- requiring all local authorities to have a professionally qualified planner at the head of the planning function (eg rather than making planning part of another department);
- giving planning officers some right of statutory protection against dismissal;
- requiring all contacts with applicants and developers to be registered in writing;
- requiring councillors to be accompanied by officers during all contacts with applicants or objectors, or barring councillors from such meetings altogether;
- giving planning officers additional powers to delay decisions if their advice is not followed.

299. These proposals seem to us by and large to be unattractive, certainly as a basis for arrangements in **all** local authorities. Some might be justified by local circumstances, such as the requirement to have a written register of all contacts with interested parties, which was introduced in the London Borough of Brent as a result of the independent inquiry there. On the other hand, a full register of contacts might be impractical. Any councillor with a conscientious attitude to the views of his/her constituents ought to be talking to them on a regular basis about issues of local concern. To record all such contacts would be time-consuming and no-one would read the register. Oral declaration of important meetings might be thought to be quite sufficient. That must be a matter for local authorities to decide for themselves.

300. Similarly, it is no doubt best practice for both officers and councillors to be present at important meetings with applicants. Whether this **must** be the case for **all** meetings seems to us to be a matter for the local authority itself. Attempting to exclude councillors altogether appears to be an over-reaction to a few bad cases.

301. We have considered whether a code of practice (whatever its precise content) should be made into a statutory or mandatory document that all authorities should have to follow. Our conclusion is that this would be unnecessary. Local government has suffered from excessive centralism. We would hope that authorities would take into account our proposed code of practice in framing detailed procedures of their own. Previous inquiries have recommended that authorities should prepare published codes to cover planning, and many have already responded.

R35 Planning committees should consider whether their procedures are in accordance with the best practice set out on page 75 above, and adapt their procedures if necessary, setting them out in a code accessible to councillors, staff, and members of the public.

Planning Gain or Obligations and Agreements

'It is important that the legislation, policy and practice of planning agreements is improved to help protect the integrity of the process'. Tony Burton, Head of Planning and Natural Resources, CPRE

'I do think, however, that the 'grey area' of planning gain is getting greyer. It is becoming increasingly common for Members to ask openly at Committee. 'What are you offering in return? And I have even heard experienced Members make comments such as 'It will be difficult for us to agree unless you meet us halfway' in respect of section 106 agreements. I think this matter does need careful consideration and Members be given guidance (other than officers saying things like 'Well, we can't make them give us anything', which may be correct, but isn't very helpful.)' Councillor Hillary Wines, Southwark Council

'It is at least arguable that the whole principle of planning gain is incapable of administration in a fashion compatible with ethical standards in public affairs.' B Kingsley Smith, Kingsley Smith and Co Solicitors

'I think that short of abandoning planning gain — which I do not offer very seriously — short of that, I come back to my old favourite, openness, coupled with ... a significant speeding up of the appeal system. I think those two — openness and a good appeal system — would go a long way to remedying the worst incidences of malpractice.' Harry Deakin, Town Planning Consultant, and former County Planning Officer, Kent County Council

302. Planning obligation (more commonly and comprehensibly called planning gain) is the most intractable aspect of the planning system with which we have had to deal.

303. The potential problems have little to do with corruption, but have a tremendous impact on public confidence. We took evidence from interested parties indicating that there was a very sharp divide between the views of local authorities, developers, and conservation and environmental groups.

304. Under the system of planning gain, which is regulated by statute and Government circulars, local authorities may negotiate agreements with developers who agree to provide for the local community facilities which are needed as a result of a development.

305. No one disputes that it is permissible for the community to impose an infrastructure charge. That is a principle accepted elsewhere. For example, a water company is permitted by law to impose an infrastructure charge on a house-builder. This is designed not only to cover the direct cost of connection to the water supply and sewerage systems, but also to contribute to the assumed cost of providing additional reservoir or sewage treatment capacity to cope with the extra demand generated by the occupants of the houses. This charge is imposed whether or not the particular development itself is the trigger which makes extra capacity necessary. Extra capacity may never become necessary. Enough may have been provided in the past, in which case the infrastructure charge is a contribution towards a cost already incurred.

306. In the same way, many developments impose extra costs on the community. Extra housing means extra demand for school places and social services. Most large developments have an effect on traffic flows with implications for roads and public transport. Some, such as out of town shopping centres, mineral sites, or large developments in remote areas, may have effects which impose costs on the community in places quite distant from the actual site of the development. In our view the community is quite entitled to seek a contribution from the developer to offset such costs, and we can readily envisage circumstances in which a development would only be made acceptable if this was forthcoming.

307. Objectors to development, however, believed that inappropriate planning permissions were being given because of infrastructure improvements offered by developers. In other words, planning permissions were being bought and sold.

308. Conversely, developers felt that they were being held to ransom by local authorities or involved in auctions to get planning permissions which should have been granted on their merits. They also argued that planning gain was being too widely interpreted, so that in some cases the gain had little or nothing to do with the development. There have indeed, been some celebrated occurrences of planning gain which seem to fit that description.

309. Another criticism was that the detail of negotiation between authority and developer was covered by a cloak of commercial confidentiality. Local people — and in some cases their councillors — were then presented with a take it or leave it offer. (One striking finding of the RTPI survey was the lack of involvement by councillors in negotiating planning obligations and the hostility of officers towards such involvement: that is not a reassuring sign.)

310. Our evidence made it clear that these criticisms were valid. All the problems outlined above have occurred in the past and there is no reason to suppose that they will not happen again in the future, particularly if house prices and the demand for office space continue to recover. The result is that planning permissions will continue to be 'bought and sold'.

311. This is not because people are unaware of the rules. The consensus of our witnesses was that the departmental guidance on this topic (the recently-issued DoE circular 1/97, reproduced at Appendix II) sets out a clear and proper approach to planning gain. Yet so, by and large, did the guidance it replaced. It appears that pressures on the ground, particularly the restrictions on the capital expenditure of local authorities, are too strong to be overcome by guidance alone. After all, by using planning gain, many local communities have secured benefits and improvements which would otherwise have been impossible.

312. Some of the potential remedies for this situation have wide consequences for planning policy. Some correspondents argued that since planning gain amounted to a tax (albeit an unorthodox and erratic one) it might as well be enacted as such.

313. In the opposite direction, it was suggested that the problem lay with the drafting of the Planning and Compensation Act 1991, which allowed too much room for manoeuvre to authorities and developers. The present guidance, which offers a more detailed set of criteria for judging the acceptability of planning obligations than the statute, is presently taken into account by the courts, and might usefully be drawn on when amending the legislation to prevent obvious abuses. The Department of the Environment should consider this option.

314. A less extreme solution, which preserves the broad present arrangements, while curbing excesses, is offered by the existing system which allows applicants to appeal against refusals of planning permission or conditions. There are around 15,000 appeals each year, of which approximately one-third are upheld.

315. The difficulty with appeals is that in recent years they have taken a very long time to conclude. Now, however, the Department of the Environment is putting more resources into accelerating the appeal process. This is not specifically intended to deal with planning gain, because the appeals system is important to the whole planning system, but it has an important effect on the propriety of planning gain.

316. At present developers may be reluctant to appeal against excessive demands for gain because the process of hearing an appeal is so slow as to be commercially damaging. A quicker appeals system would encourage the re-examination of cases where councils have sailed too close to the wind in rejecting an application.

317. It is of course open to authorities to specify in their local plans the policies which they will adopt when dealing with planning obligations, which opens their policies up to the scrutiny of interested parties — including members of the public and development bodies — when the draft plan is examined in a public inquiry. If the Secretary of State is not content with the draft, he or she has the right to direct that the policies are altered to meet the guidance issued by the Department. The authority should also set out site specific requirements as part of the brief for large sites identified in the plan as suitable for development, and ensure that any negotiations on these or other sites fall within the framework of its written general approach.

318. We consider it essential, if it is not to be thought that planning permission is being bought or sold, that all potential developers should be operating on a basis of equality in this respect, although clearly the precise details of any agreement must be the subject of direct negotiation. This does not solve all the problems thrown up by particular applications, but certainly lessens them.

> *'Authorities would need a very strong case either to exclude the press and public when discussing a planning obligation or to determine that connected correspondence should be kept from public view.' Department of the Environment, Circular 1/97, paragraph B19*

319. The other aspect of the problem is the need to ensure public confidence that unsuitable planning permissions are not being granted in exchange for offers of planning gain. It is entirely unacceptable for negotiations between a public body like a local authority, and a commercial developer, to be hidden from either local people or their councillors. We recognise, of course, that elements of a planning gain agreement may be commercially sensitive. But these should be kept to a minimum; they should be individually justified; and confidentiality should cease well before a final decision is taken by the authority.

320. At present, some authorities ensure that the heads of agreement between authority and developer are put into a planning committee paper which is open to public inspection when the application is considered. This is a practice which we endorse.

R36 The Department of the Environment (and the Scottish and Welsh Offices) should consider whether present legislation on planning obligations is sufficiently tightly worded to prevent planning permissions from being bought and sold. The Departments should continue to reduce the time taken for planning appeals to be arranged and should set demanding targets to that end.

R37 Local authorities should adopt rules on openness that allow planning agreements to be subject to discussion by members of the authority and the public. They should not restrict access to supporting documents except where justified by the requirements of commercial confidentiality, which should be interpreted narrowly.

Independent Scrutiny of Planning Decisions

'I do think that most Planning Authorities give a good and highly professional service which is let down only when their own landowning role is involved.' KJ Power, Chartered Town Planner

'I appreciate that this is a difficult problem to solve but it does appear in principle wrong, that councils should determine planning applications, in which they themselves have a strong financial interest. Even if a theoretical division of development and planning functions were introduced, it would be difficult to implement under a single Chief Executive.' Charles Kirkman CBE

321. It has been a common theme of our previous work to support the principle that the decisions of public bodies and organisations ought to be subject to some form of independent scrutiny. This principle is already taken into account in planning by the right of appeal against refusal, and the power of the Secretary of State to 'call in' applications which satisfy certain criteria. Unfortunately, the appeal process can be slow, and the power of call-in is used only in a very small minority of applications, although these of course tend to be the most controversial[11].

322. In 1992, in North Cornwall, the Department of the Environment intervened to set up an administrative inquiry into planning decisions. This was not however normal procedure. The reluctance of the Department to act on the concerns which had been expressed to it by planning officers and local people was in retrospect mistaken, although motivated by a proper concern for local autonomy. Other investigations have, creditably, been commissioned by authorities themselves.

323. Public suspicion is also created by the power of local authorities to grant themselves planning permissions for their own land and developments. Some of our correspondents have suggested that these applications should always be called in for determination. The difficulty with this proposal is that local authorities may have interests of a minor kind in very many applications, so some form of threshold would be required.

324. At present, local authorities in England and Wales have to notify the Secretary of State of applications in which they have an interest, if the application is a departure from the local plan but one which they do not propose to refuse. The Secretary of State can then decide whether to call in the application. This is a useful safeguard. On the evidence presented to us, we do not believe that automatic call-in for all applications in which a local authority has an interest is either necessary or workable, providing applications contrary to the local plan are rigorously scrutinised by the government Departments concerned.

325. Of course, an application may well excite a substantial body of objections, **despite** being in accordance with the local plan. It is a fact of life that local residents may not become aware of a major development proposal until a formal application is made, whatever has been said at draft plan stage.

11. About 130 per year of a total of c480,000 planning applications.

326. A controversial application for which the local authority proposes to grant itself consent is likely to excite criticism. Is it adequate for public confidence for the local authority to reply, 'this application is in accordance with our local plan'? We believe not. Substantial public concern should justify, in its own right, notification of the application to the appropriate Secretary of State.

327. Government departments may be concerned that this will create so much additional workload that the quality of scrutiny they give to the planning system as a whole will suffer. They should therefore establish, and review regularly, a definition of a 'substantial level of objections' and advise local authorities accordingly, so that trivial cases will not congest the notification system.

328. It goes without saying that a local authority should be extremely careful about handling applications by officers and councillors, particularly where the latter are planning committee members. The requirement in some authorities that all such applications should be managed by professional agents is helpful: in all cases authorities must seek ways to demonstrate publicly that no preferential treatment is given to applications in which members or staff have a personal interest.

329. Another possibility to guard against long-term abuse of the system in a single authority would be for the Department of the Environment to be given a more pro-active role in supervising the activities of planning committees — a role similar to that of the district audit service in financial matters.

330. Still more radical is the suggestion that third-party rights of appeal should be introduced, in other words, that objectors should have the right to appeal against the granting of planning permission, in the same way that applicants can appeal against refusal. Under the present system, third parties can be represented at appeals made by an applicant, but cannot themselves appeal.

331. Although superficially attractive, this would not be in keeping with the basis of the present system, which is to permit development unless there are good planning reasons not to do so. There is also a practical argument that the appeal system would collapse under the weight of additional appeals.

332. On balance, we do not consider that the problems which have been revealed by investigations into some authorities have created a demand for this degree of reform. That would be to make the mistake of judging all authorities guilty of the sins of a few. In our view, a swifter appeals system, and an expanded system of notification, might answer many of the complaints that the Committee has received in this area as well as in the case of planning gain.

333. Our conclusion is that the balance struck at present between local autonomy and central guidance and supervision is broadly correct. The Department of the Environment must however be kept fully informed and show due diligence. It must not hesitate to step in if public disquiet is clear. Respect for local autonomy is a good principle, but it has led the Department to fail to respond to serious local concerns in the past.

R38 The Government should require authorities to notify the appropriate Secretary of State of all planning applications in which they have an interest, either in the development or in the land, either where the proposed development is contrary to the local plan, or has given rise to a level of objections regarded by the appropriate Secretary of State as substantial.

R39 The Government should be more ready to use its powers to call in all major planning applications handled by an authority where, over a period of time, there is substantial public concern about that authority's decision-making procedures.

Appendix I

The National Code of Local Government Conduct

Introduction

The National Code of Local Government Conduct provides, by way of guidance to members of local authorities, recommended standards of conduct in carrying out their duties, and in their relationships with the council and the council's officers.

The Code is issued jointly by the Secretary of State for the Environment, the Secretary of State for Scotland and the Secretary of State for Wales, under the provisions of the Local Government and Housing Act 1989. The Code has been agreed by associations representing local authorities in all three countries, and approved by both Houses of Parliament.

The Code applies to all members of

- in England, county councils, district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly and parish and town councils;
- in Scotland, regional councils, islands councils, district councils, and joint boards and committees;
- in Wales, county councils, district councils and community and town councils.

All councillors are required on accepting office to declare that they will be guided by the Code.

The Code also applies to all members of committees, joint committees, and sub-committees of these authorities, whether or not they are councillors, and whether or not they are voting members of those bodies.

The Code represents the standard against which the conduct of members will be judged, both by the public, and by their fellow councillors. The local ombudsmen may also regard a breach of the Code as incompatible with good administration, and may make a finding of maladministration by the council in these circumstances.

The Code

The Law and standing orders

1. Councillors hold office by virtue of the law, and must at all times act within the law. You should make sure that you are familiar with the rules of personal conduct which the law and standing orders require, and the guidance contained in this Code. It is your responsibility to make sure that what you do complies with these requirements and this guidance. You should regularly review your personal circumstances with this in mind, particularly when your circumstances change. You should not at any time advocate or encourage anything to the contrary. If in any doubt, seek advice from your council's appropriate senior officer or from your own legal adviser. In the end however, the decision and the responsibility are yours.

Public duty and private interest

2. Your over-riding duty as a councillor is to the whole local community.

3. You have a special duty to your constituents, including those who did not vote for you.

4. Whilst you may be strongly influenced by the views of others, and of your party in particular, it is your responsibility alone to decide what view to take on any question which councillors have to decide.

5. If you have a private or personal interest in a question which councillors have to decide, you should never take any part in the decision, except in the special circumstances described below. Where such circumstances do permit you to participate, you should never let your interest influence the decision.

6. You should never do anything as a councillor which you could not justify to the public. Your conduct, and what the public believes about your conduct, will affect the reputation of your council, and of your party if you belong to one.

7. It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.

Disclosure of pecuniary and other interests

8. The law makes specific provision requiring you to disclose both direct and indirect pecuniary interests (including those of a spouse with whom you are living) which you may have in any matter coming before the council, a committee or a sub-committee. It prohibits you from speaking or voting on that matter. Your council's standing orders may also require you to withdraw from the meeting while the matter is discussed. You must also by law declare certain pecuniary interests in the statutory register kept for this purpose. These requirements must be scrupulously observed at all times.

9. Interests which are not pecuniary can be just as important. You should not allow the impression to be created that you are, or may be, using your position to promote a private or personal interest, rather than forwarding the general public interest. Private and personal interests include those of your family and friends, as well as those arising through membership of, or association with, clubs, societies and other organisations such as the Freemasons, trade unions and voluntary bodies.

10. If you have a private or personal non-pecuniary interest in a matter arising at a local authority meeting, you should always disclose it, unless it is insignificant, or one which you share with other members of the public generally as a ratepayer, a community chargepayer or an inhabitant of the area.

11. Where you have declared such a private or personal interest, you should decide whether it is clear and substantial. If it is not, then you may continue to take part in the discussion of the matter and may vote on it. If, however, it is a clear and substantial interest, then (except in the special circumstances described below) you should never take any further part in the proceedings, and should always withdraw from the meeting whilst the matter is being considered. In deciding whether such an interest is clear and substantial, you should ask yourself whether members of the public, knowing the facts of the situation, would reasonably think that you might be influenced by it. If you think so, you should regard the interest as clear and substantial.

12. In the following circumstances, but only in these circumstances, it can still be appropriate to speak, and in some cases to vote, in spite of the fact that you have declared such a clear and substantial private or personal interest:

(a) if your interest arises in your capacity as a member of a public body, you may speak and vote on matters concerning that body; for this purpose, a public body is one where, under the law governing declarations of pecuniary interests, membership of the body would not constitute an indirect pecuniary interest;

(b) if your interest arises from being appointed by your local authority as their representative on the managing committee, or other governing body, of a charity, voluntary body or other organisation formed for a public purpose (and not for the personal benefit of the members), you may speak and vote on matters concerning that organisation;

(c) if your interest arises from being a member of the managing committee, or other governing body of such an organisation, but you were not appointed by your local authority as their representative, then you may speak on matters in which that organisation has an interest; you should not vote on any matter directly affecting the finances or property of that organisation, but you may vote on other matters in which the organisation has an interest;

(d) if your interest arises from being an ordinary member or supporter of such an organisation (and you are not a member of its managing committee or other governing body), then you may speak and vote on any matter in which the organisation has an interest.

Dispensations

13. Circumstances may rise where the work of your authority is affected because a number of councillors have personal interests (pecuniary or non-pecuniary) in some question.

14. In certain circumstances, you may be able to get a dispensation to speak, and also to vote, in spite of a pecuniary interest. Such dispensations are given under statute by the Secretary of State in the case of county, regional, islands, district and London borough councils, and (in England and Wales) by the district council in the case of town, parish and community councils.

15. In the case of non-pecuniary interests, there may be similar exceptions to the guidance contained in paragraphs 9 to 12 of this Code. In the circumstances below it may be open to you to decide that the work of the council requires you to continue to take part in a meeting which is discussing a matter in which you have a clear substantial private or personal interest.

16. Before doing so, you should

(a) take advice from the chairman of your local authority (if this is practicable) and from the appropriate senior officer of the authority as to whether the situation justifies such a step;

(b) consider whether the public would regard your interest as so closely connected with the matter in question that you could not be expected to put your interest out of your mind (for example, the matter might concern a decision by the council affecting a close relative); if you think that they would, you should never decide to take part in a discussion of, or a vote on, the matter in question; and

(c) consider any guidance which your council has issued on this matter.

17. The circumstances in which (after such consultation and consideration) you may decide to speak and vote on a matter in which you have a clear and substantial private or personal non-pecuniary interest are if, *but only if*:

- at least half the council or committee would otherwise be required to withdraw from consideration of the business because they have a personal interest; or
- your withdrawal, together with that of any other members of the council or committee who may also be required to withdraw from consideration of the business because of a personal interest, would upset the elected party balance of the council or committee to such an extent that the decision is likely to be affected.

18. If you decide that you should speak or vote, notwithstanding a clear and substantial personal or private non-pecuniary interest, you should say at the meeting, before the matter is considered, that you have taken such a decision, and why.

19. The guidance set out in paragraphs 15–18 above also applies to sub-committees. However if the sub-committee is very small, or if a large proportion of members declare a personal interest, it will usually be more appropriate for the matter to be referred to the parent committee.

Disclosure in other dealings

20. You should always apply the principles about the disclosure of interests to your dealings with council officers, and to your unofficial relations with other councillors (at party group meetings, or other informal occasions) no less scrupulously than at formal meetings of the council, committees and sub-committees.

Membership of committees and sub-committees

21. You, or some firm or body with which you are personally connected, may have professional, business or other personal interests within the area for which the council are responsible. Such interests may be substantial and closely related to the work of one or more of the council's committees or sub-committees. For example, the firm or body may be concerned with planning, developing land, council housing, personnel matters or the letting of contracts for supplies, services or works. You should not seek, or accept, membership of any such committee or sub-committee if that would involve you in disclosing an interest so often that you could be of little value to the committee or sub-committee, or if it would be likely to weaken public confidence in the duty of the committee or sub-committee to work solely in the general public interest.

Leadership and Chairmanship

22. You should not seek, or accept, the leadership of the council if you, or any body with which you are associated, has a substantial financial interest in, or is closely related to, the business or affairs of the council. Likewise, you should not accept the chairmanship of a committee or sub-committee if you have a similar interest in the business of the committee or sub-committee.

Councillors and officers

23. Both councillors and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees.

24. Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers.

25. The law and standing orders lay down rules for the appointment, discipline and dismissal of staff. You must ensure that you observe these scrupulously at all times. Special rules apply to the appointment of assistants to political groups. In all other circumstances, if you are called upon to take part in appointing an officer, the only question you should consider is which candidate would best serve the whole council. You should not let your political or personal preferences influence your judgement. You should not canvass the support of colleagues for any candidate and you should resist any attempt by others to canvass yours.

Use of confidential and private information

26. As a councillor or a committee or sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else.

Gifts and hospitality

27. You should treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organisation making the offer may be doing, or seeking to do, business with the council, or may be applying to the council for planning permission or some other kind of decision.

28. There are no hard or fast rules about the acceptance or refusal of hospitality or tokens of goodwill. For example, working lunches may be a proper way of doing business, provided that they are approved by the local authority and that no extravagance is involved. Likewise, it may be reasonable for a member to represent the council at a social function or event organised by outside persons or bodies.

29. You are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government. The offer or receipt of gifts or invitations should always be reported to the appropriate senior officer of the council.

Expenses and allowances

30. There are rules enabling you to claim expenses and allowances in connection with your duties as a councillor or a committee or sub-committee member. These rules must be scrupulously observed.

Dealings with the council

31. You may have dealings with the council on a personal level, for instance as a ratepayer or community chargepayer, as a tenant, or as an applicant for a grant or a planning permission. You should never seek or accept preferential treatment in those dealings because of your position as a councillor or a committee or sub-committee member. You should also avoid placing yourself in a position that could lead the public to think that you are receiving preferential treatment: for instance, by being in substantial arrears to the council, or by using your position to discuss a planning application personally with officers when other members of the public would not have the opportunity to do so. Likewise, you should never use your position as a councillor or a committee or sub-committee member to seek preferential treatment for friends or relatives, or any firm or body with which you are personally connected.

Use of council facilities

32. You should always make sure that any facilities (such as transport, stationery, or secretarial services) provided by the council for your use in your duties as a councillor or a committee or sub-committee member are used strictly for those duties and for no other purpose.

Appointments to other bodies

33. You may be appointed or nominated by your council as a member of another body or organisation — for instance, to a joint authority or a voluntary organisation. You should always observe this Code in carrying out your duties on that body in the same way you would with your own authority.

Appendix II

Extract from Circular 1/97; Planning Obligations

Policy and The Law

3. On a number of occasions the Courts have laid down the legal requirements for the validity and materiality of planning obligations.

4. This Circular sets out the Government's *policy* for the use of planning obligations.

Policy: The Broad Principles

5. The planning system should operate in the public interest, and should aim to foster sustainable development, providing homes, investment and jobs in a way that adds to rather than detracts from the quality of the environment. These objectives are achieved through the preparation of development plans and the exercise of development control functions. In granting planning permission, or in negotiating with developers, a local planning authority may seek to secure modifications or improvements to the proposals submitted for their approval. They may grant permission subject to conditions, and where appropriate they may seek to enter into planning obligations with a developer regarding the use or development of the land concerned or of other land or buildings.

6. To retain public confidence, such arrangements must be operated in accordance with the fundamental principle that planning permission may not be bought or sold. This principle is best served when negotiations are conducted in a way which is seen to be fair, open and reasonable; in this way, and properly used, planning obligations may enhance the quality of development and enable proposals to go ahead which might otherwise be refused. Annex B to this Circular explains the detailed policies which the Secretary of State considers provide the best means of ensuring that there is adherence to this principle. It is intended to provide guidance to local planning authorities and developers. It also sets out how the Secretary of State — and his Inspectors — will approach decisions on applications which are referred to him under section 77 of the 1990 Act or which come to him on appeal.

7. Amongst other factors, the Secretary of State's policy requires planning obligations to be sought only where they meet the following tests:

(i) necessary;

(ii) relevant to planning;

(iii) directly related to the proposed development;

(iv) fairly and reasonably related in scale and kind to the proposed development;

(v) reasonable in all other respects.

Appendix III

Birmingham City Council

A Protocol For Member/Officer Relations

Introduction

1.1 The purpose of this protocol is to guide members and officers of the Council in their relations with one another.

1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.

1.3 This protocol is to a large extent no more than a written down statement of current practice and convention. In some respects however, it seeks to promote greater clarity and certainty.

1.4 This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to members and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.

1.5 A relevant extract from the National Code of Local Government Conduct for members is reproduced below:

> 23. Both councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees
>
> 24. Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers."

1.6 In line with the National Code's reference to "mutual respect", it is important that any dealings between members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.

2. Officer advice to Party Groups

2.1 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups.

2.2 The support provided by officers can take many forms, ranging from a briefing meeting with a Chairperson or Spokesperson prior to a Committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

2.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:

(a) officer support in these circumstances must not extend beyond providing information and advice in relation to matters of *Council* business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of *party* business are to be discussed;

(b) party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and

(c) Similarly, where officers provide information and advice to a party groupmeeting in relation to a matter of Council business, this cannot act as asubstitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.

2.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the National Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.

2.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.

2.6 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

3. Support services to members and party groups

3.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport, etc) to members is to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

4. Members' access to information and to council documents

4.1 Members are free to approach any Council Department to provide them with such information, explanation and advice (about that Department's functions) as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Chief Officer or another senior officer of the Department concerned.

4.2 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by the common law.

4.3 Members have a statutory right to inspect any Council document *which contains material relating to any business which is to be transacted at a Council, Committee or Sub-committee meeting*. This right applies irrespective of whether the member is a member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not however apply to documents relating to certain items which may

appear on the private (blue) agenda for meetings. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

4.4 The common law right of members is much broader and is based on the principle that any member has a prima facie right to inspect Council documents *so far as his/her access to the documents is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council*. This principle is commonly referred to as the "need to know" principle.

4.5 The exercise of this common law right depends therefore upon the member's ability to demonstrate that he/she has the necessary "need to know". In this respect a member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". This question must initially be determined by the particular Chief Officer whose Department holds the document in question (with advice from the Director of Legal Services). In the event of dispute, the question falls to be determined by the relevant Committee — i.e. the Committee in connection with whose functions the document is held.

4.6 In some circumstances (e.g. a Committee member wishing to inspect documents relating to the functions of that Committee) a member's "need to know" will normally be presumed. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms.

4.7 Whilst the term "Council document" is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a member of one party group will not have a "need to know", and therefore a right to inspect, a document which forms part of the internal workings of another party group.

4.8 Further and more detailed advice regarding members' rights to inspect Council documents may be obtained from the Director of Legal Services.

4.9 Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided i.e. in connection with the proper performance of the member's duties as a member of the Council. This point is emphasised in the National Code of Local Government Conduct in the following terms:

> "26. As a councillor or a committee or sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else."

5. *Officer/Chairperson Relationships*

5.1 It is clearly important that there should be a close working relationship between the Chairperson of a Committee and the Chief Officer and other senior officers of any Department which reports to that Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other members and other party groups.

5.2 Whilst the Chairperson of a Committee (or Sub-Committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Chief Officer will be under a duty to submit a report on a particular matter. Similarly, a Chief Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Chairperson and a Chief Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

5.3 In relation to action between meetings, it is important to remember that the law only allows for decisions (relating to the discharge of any of the Council's functions) to be taken by a Committee, a Sub-Committee or an officer. The law does not allow for such decisions to be taken by a Chairperson or indeed by any other single member.

5.4 It is customary at most Committee and Sub-Committee meetings for a resolution to be passed, under the heading "Authority to Act", which authorises named officers to take action between meetings in consultation with the Chairperson. Whilst such action is sometimes (incorrectly) referred to as "Chair's action", it is the officer, rather than the Chairperson, who takes the action and it is the officer who is accountable for it. This decision making route should only be used sparingly and where it is used, a report must be submitted to the next available meeting giving an account not only of the action taken, but also of why the "Authority to Act" was used.

5.5 Finally, it must be remembered that officers within a Department are accountable to their Chief Officer and that whilst officers should always seek to assist a Chairperson (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Chief Officer.

6. *Correspondence*

6.1 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of "silent copies" should not be employed.

6.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a member, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a member.

7. *Involvement of Ward Councillors*

7.1 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward members should be notified at the outset of the exercise.

Appendix IV

Meetings of visits by Committee and Secretariat

The following list includes local authorities, representative bodies, individuals and organisations which members of the Committee and secretariat met or visited during the course of its study into aspects of conduct in local government. We are grateful for their help and advice.

County Councils in England

Cheshire
Devon
Durham
East Sussex
Essex
Kent
Hampshire
Lancashire
Northumberland
North Yorkshire
Nottinghamshire
Shropshire
Suffolk
Surrey
Warwickshire
West Sussex

District Councils in England

Adur District
Babergh District
Berwick upon Tweed Borough
Blackpool Borough
Bournemouth Borough
Brighton Borough
Cambridge City
Chelmsford Borough
Colchester Borough
Darlington Borough
Dartford Borough
Derby City
Elmbridge Borough
Gloucester City
Harrogate Borough
Ipswich Borough
Kettering Borough
Mid Suffolk District
North Dorset District
Northampton Borough
Nottingham City
Plymouth City
Portsmouth City
Preston Borough
Purbeck District
Southampton City
South Ribble Borough
Spelthorne Borough
Tandridge District
Teesdale District

Metropolitan District Councils in England

Birmingham City
Calderdale Borough
Coventry City
Kirklees Borough
Knowsley Borough
Leeds City
Liverpool City
Manchester City
Newcastle upon Tyne City
Stockport Borough
Sunderland City

Unitary Councils in England

Bath and North East Somerset
Bristol City
Isle of Wight
Kingston upon Hull City
Stockton on Tees Borough
City of York

London Borough Councils

Brent
Hillingdon
Islington
Kingston upon Thames
Lambeth
Newham
Richmond upon Thames
Wandsworth

Unitary and Island Councils in Scotland

Aberdeen City
Aberdeenshire
City of Edinburgh
Falkirk
City of Glasgow
Highland
North Lanarkshire
Perth and Kinross
Renfrewshire
West Dunbartonshire
West Lothian
Western Isles

Unitary Councils in Wales

Bridgend County Borough
Caerphilly County Borough
Cardiff County
Denbighshire County
Flintshire County
Neath Port Talbot County Borough
Newport County Borough
Powys County
City & County of Swansea
Torfaen County Borough

List of representative organisations and individuals with whom members of the secretariat have had informal meetings

Organisations

Accounts Commission for Scotland
Association of Metropolitan Authorities
Commission for Local Administration in England
Commission for Local Administration in Scotland
Convention of Scottish Local Authorities (CoSLA)
Department of the Environment
Local Government Management Board
National Association of Local Councils
The Planning Co-operative
Royal Town Planning Institute
Scottish Office
Town and Country Planning Association
Welsh Local Government Association

Individuals

David Beales
(Director of Planning and Property, East Hertfordshire District Council)

Tom Caulcott
(Formerly Chief Executive of Birmingham City Council)

Charles George QC
(carried out 1991 inquiry into planning in London Borough of Brent)

R W Phelps
(Planning Inspector who conducted an independent inquiry into planning in Bassetlaw District Council)

David Pinney
(Hon Secretary, District Planning Officers Society and Chief Planning Officer, Torridge District Council)

Dr I S Roxburgh
(Planning & Environment Director, George Wimpey PLC)

Local Government Seminar

Members of the Committee and secretariat attended a briefing seminar on local government, arranged by Professor Michael Clarke Head of the School of Public Policy at the University of Birmingham, on 19 and 20 September 1996. The panel members were as follows:

Professor Michael Clarke

Councillor Jane Clarke
South Somerset District Council (Liberal Democrat)

Dr Colin Crawford
Faculty of Law, University of Birmingham

Councillor Geoffrey Gibbons
Solihull Metropolitan Borough Council (Conservative)

Tim Harrison
County Secretary, Leicestershire County Council

Stella Manzie
General Manager, Redditch Borough Council

Councillor Peter Pinfield
Leader, Hereford and Worcester County Council (Labour)

Professor John Stewart
Professor of Local Government and Administration, University of Birmingham

David Winchurch
Chief Executive, Walsall Metropolitan Borough Council

Appendix V

Abbreviations used in this report

ACC	Association of County Councils
ACSeS	Association of Council Secretaries and Solicitors
ACSCO	Association of Contracts Services Chief Officers
ADC	Association of District Councils
ALA	Association of Local Authorities
ALG	Association of London Government
AMA	Association of Metropolitan Authorities
C&AG	Comptroller and Auditor General
CCT	Compulsory Competitive Tendering
CFO	Chief Finance Officer
CIPFA	Chartered Institute of Public Finance and Administration
CLA	Commissioner for Local Administration — the Local Government Ombudsman for England
CoSLA	Convention of Scottish Local Authorities
CPRE	Council for the Protection of Rural England
DA	District Auditor
DLO	Direct Labour Organisation
DoE	Department of the Environment
DSO	Direct Service Organisation
ICSA	Institute of Chartered Secretaries and Administrators
INLOGOV	Institute of Local Government Studies, University of Birmingham
LAs	Local Authorities
LAAs	Local Authority Associations
LGA	Local Government Association (an association formed by merger of the ACC, ADC, and AMA in 1997)
LGC	Local Government Chronicle
LGComm	Local Government Commission
LGIU	Local Government Information Unit
LGMB	Local Government Management Board
LGO	Local Government Ombudsman
MBC	Metropolitan Borough Council
MJ	Municipal Journal
MPO	Federated Union of Managerial and Professional Officers
NALC	National Association of Local Councils
NAO	National Audit Office

NCLGC	National Code of Local Government Conduct
NCVO	National Council for Voluntary Organisations
NOC	No Overall Control
NPF	National Planning Forum
OPP	Outline Planning Permission
PAC	Public Accounts Committee
PPG	Planning Policy Guidance Notes
RTPI	Royal Town Planning Institute
SOs	Standing Orders
SOLACE	Society of Local Authority Chief Executives
SLGO	Scottish Local Government Ombudsman
SLT	Society of London Treasurers
T&CP	Town and Country Planning
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 1981
WLGA	Welsh Local Government Association
WLGO	Welsh Local Government Ombudsman

About the Committee

Terms of Reference

The then Prime Minister announced the setting up of the Committee on Standards in Public Life (the Nolan Committee) in the House of Commons on Tuesday 25 October 1994 with the following terms of reference:

(Hansard 25 October 1994, col 758)

The then Prime Minister made it clear that the remit of the Committee does not extend to investigating individual allegations of misconduct. The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for three years.

The Rt. Hon. The Lord Nolan
Lord of Appeal in Ordinary (Chairman)

Sir Clifford Boulton GCB
Sir Martin Jacomb
Professor Anthony King
The Rt. Hon. Tom King CH MP
The Rt. Hon. The Lord Shore of Stepney

The Rt. Hon.
The Lord Thomson of Monifieth KT DL
Sir William Utting CB
Dame Anne Warburton DCVO CMG
Diana Warwick

The Committee is assisted by a small secretariat:

Alan Riddell (*Secretary*)*, Martin Le Jeune (*Assistant Secretary*),
Andrew Brewster, Vance Duhaney, Gertrude Bwona*, Steve Pares (until 7 August 1996),
Gertrude Bwona, Sue Carr, Julie Botley, Peter Rose (*Press Secretary*).

The committee was assisted by the expert advice of
Tim Harrison, former County Secretary, Leicestershire County Council

Expenditure

The estimated gross expenditure of the Committee on this study to the end of June 1997 is £526,437. This includes staff costs, the cost of printing and distributing (in June 1996) 40,000 copies of a paper setting out the key issues and questions the Committee would be dealing with in its third report and costs associated with public hearings which were held at the Park Hotel, Cradiff on 4 and 5 December 1996; the Hilton National, Edinburgh, on 16 and 17 December 1996; and Westminster Central Hall from 21 January 1997 to 29 February 1997.

* *Following completion of this report, Mr Riddell was replaced by Richard Horsman and Gertrude Bwona by Juliet Armaquaye.*

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