

**LOCAL GOVERNMENT CODE OF CONDUCT
REVIEW WORKING GROUP REPORT**

2016

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EXECUTIVE SUMMARY OF RECOMMENDATIONS

The Principles (Part 3)

1. All stakeholders who made representations to the Code of Conduct Review Group (the Review Group) indicated their support for amending the principles in Part 3 of the Northern Ireland Code of Conduct for Councillors (the Councillors' Code), to align them with the principles contained in the revised Members of the Legislative Assembly Code and Guide (the MLA Code) which was approved by the Assembly in June 2015.
2. Stakeholders considered that it would be helpful for all elected representatives to have a common approach in respect of principles.
3. The Review Group concluded that the principles should be amended to reflect this, using the revised wording as outlined in Figure 2 (Recommendation 1 see page 20).

The Principle of "Public Duty"

4. The revised MLA Code removes "Public Duty" from the list of principles and makes it an enforceable rule. The descriptor has also been revised. The Assembly Standards and Privileges Committee, when reviewing the MLA Code had decided that this new rule would only be broken if an MLA was convicted of, or admitted to an offence committed whilst acting in their elected capacity.
5. The Review Group also sought the views of stakeholders on making the principle of Public Duty an enforceable rule in the Councillors' Code and the majority of stakeholders agreed. The Review Group recommends that the principle of Public Duty should become an enforceable rule in the Councillors' Code (Recommendation 2 see page 24).
6. The Review Group also recommends that the wording of the new rule of Public Duty should be worded as set out. (Recommendation 3 see page 24).

Principles: Aspirational or Enforceable

7. The principles in the Councillors' Code are enforceable, whereas the principles in the revised MLA Code are aspirational. All stakeholders who commented on this issue, with one exception, considered that the principles should be amended to reflect the aspirational approach taken in the revised MLA Code.
8. In considering this issue, the Review Group also looked at the findings of the Assembly Committee on Standards and Privileges which conducted the review of the MLA Code. In reviewing the MLA Code, the Standards and Privileges Committee took note of the report from the Committee on Standards in Public Life's publication "Standards Matter"¹ which states that principles should be broadly expressed and aspirational to form part of the basic elements of a strong ethical framework.
9. The Review Group also noted that codes of conduct applicable to other tiers of elected representatives in the UK also contain principles that are aspirational.
10. The Review Group concluded that principles and Rules should be viewed as complementary in that, if a person had not breached the rules, they were unlikely to have breached a principle. The Standards Matter report indicated that principles, however, are broadly defined and open to interpretation, which could lead to them exceeding the requirements of the Rules. Behaviour can be within rules set out in a code yet may still offend against underlying principles and values as judged by others, which can include other councillors or the general public. However, opinions can vary as to what should be considered as "acceptable behaviour".
11. Taking these factors into account, the Review Group recommends that the principles in the Councillors' Code should be considered aspirational in line

¹ Committee on Standards in Public Life's 14th report, Standards Matter: a review of best practice in promoting good behaviour in public life.

with the revised principles in the MLA code approved by the Assembly in June 2015 (Recommendation 4 see page 27).

12. To clarify this, the Review Group recommends that the wording of paragraph 3.2 in Part 3 of the Councillors' Code should be revised (Recommendation 5 see page 28).

Rules on decision-making - Part 8

13. Stakeholders generally supported the application of Rules 8.1(a) to (h) to all council decisions as it was considered that this would ensure a fair, open and impartial approach to the decision-making in councils.
14. Any difficulties raised in relation to Part 8 of the Councillors' Code were in respect of Rules 8.1(i) to (l) (see Chapter 6 page 28). Most stakeholders, when commenting on these rules, provided evidence relating to planning committee scenarios. It was from their experience of either being a member of, or interacting with, a council planning committee that stakeholders were able to offer examples to support their concerns.
15. Some stakeholders who were planning committee members (see paragraph 6.6) indicated that they were unsure under Rules 8.1(i) to (l) whether, prior to planning meetings, they could participate in informal planning discussions and offer opinions, whether with other councillors, their constituents or potential planning applicants. However, most stakeholders indicated to the Review Group that they were aware that, during planning meetings, they would be able to address the committee on behalf of their constituents etc., but then would not be able to take part in the final decision-making process.
16. Some stakeholders who were not planning committee members also raised concerns about these rules, indicating that they were unsure whether it was acceptable to routinely engage with the committee, if required, to offer opinions or seek clarity from committee members on behalf of their

constituents. One stakeholder was under the impression it was not acceptable to have such discussions, while another stakeholder informed the Review Group that they considered it was acceptable to approach the planning committee on tabled matters.

17. In addition, whether a planning committee member or not, most stakeholders considered that the rules were unclear with regard to whether it would be appropriate for councillors to react to approaches by the public to provide them with assistance on planning matters generally.
18. The Review Group considers that clarity is required for all councillors on what is deemed acceptable engagement with either constituents or other councillors prior to planning matters coming before the planning committee, or in some instances, the full council, for agreement.
19. The Review Group recommends that, in order to provide clarity for councillors, the wording of Rule 8.1 should be revised so that:
 - Rules 8.1(a) to (h) would apply to all decisions; and
 - Rules 8.1(i) to (l) would apply to quasi-judicial decisions, (eg planning, licensing, etc) and to decisions on appointments and the awarding of contracts (Recommendation 6 see page 35).
20. The Review Group recommends that the wording of Rule 8 should be revised to provide clarity (Recommendation 7 see page 35).

CHAPTER 1 - INTRODUCTION

Background - The Ethical Standards Framework

- 1.1 Part 9 (sections 53 to 65) of the Local Government Act (Northern Ireland) 2014 (the 2014 Act) establishes the new ethical standards framework for councillors in Northern Ireland. This consists of a mandatory code of conduct for councillors with supporting mechanisms for investigation, adjudication and appeal.
- 1.2 Section 53 of the 2014 Act enables the Department of the Environment (the Department) to issue a code of conduct for councillors, and this provision was commenced on 20 May 2015. The remaining sections in Part 9 were commenced on 2 June 2014.

Code of Conduct

- 1.3 Section 53 of the 2014 Act makes provision:
 - for the Department to issue, revise or withdraw a code of conduct;
 - that any code must be consulted on prior to its issue, and
 - that any draft of a code must be subject to the approval, by resolution, of the Northern Ireland Assembly.
- 1.4 The Northern Ireland Local Government Code of Conduct for Councillors (the Councillors' Code) was subject to public consultation before being laid and approved by resolution of the Northern Ireland Assembly on 27 May 2014. Parts 1-8 of the Councillors' Code came into force on 28 May 2014 following the local government elections. Part 9, which deals with planning matters, came into force on 1 April 2015, when the 11 new councils took over responsibility for a range of planning control powers including defining development and setting the framework for the processing and determination of planning applications.

The Commissioner for Complaints (the Commissioner)

- 1.5 The Northern Ireland Commissioner for Complaints (the Commissioner) has responsibility for the investigation and adjudication functions under the 2014 Act. The Commissioner has delegated the authority to investigate alleged breaches of the Councillors' Code to the Deputy Commissioner and a dedicated team, known as the Local Government Ethical Standards Directorate (LGES Directorate), which has been established within the Commissioner's office specifically to deal with ethical standards cases under the Councillors' Code. The LGES Directorate receives, assesses and investigates code of conduct complaints, while the Commissioner undertakes the adjudication function.

Commissioner's Guidance

- 1.6 Section 54 of the 2014 Act provides that the Commissioner may issue guidance on matters relating to the conduct of councillors. The Commissioner issued guidance on 20 March 2015. <http://www.ni-ombudsman.org.uk/niombudsmanSite/files/05/058c7c9d-a343-4ccf-9751-e0c8668a5159.pdf> The Guidance is intended to assist councillors to meet their obligations under the new ethical standards framework i.e. the Councillors' Code. It makes extensive use of case study examples from other jurisdictions, to help councillors to develop their understanding of the code of conduct as well as explaining how the Commissioner's office will undertake its work on the investigation and adjudication of complaints.

Minor Breaches of the Code and Alternative Action

- 1.7 Section 55(2) of the 2014 Act makes provision for the Commissioner to take action instead of, or in addition to, conducting an investigation when dealing with an alleged breach of the Code (ie "alternative action").
- 1.8 The objective of alternative action is to bring about a satisfactory resolution of the complaint in the most effective, efficient and proportionate manner

and without the cost and resource implications of an investigation and/or an adjudication. It is envisaged that the alternative action procedure would apply to more minor breaches of the Code where the failure to comply with the Code is unlikely to result in a significant sanction. A decision to take alternative action in any particular case would be made by the Deputy Commissioner

1.9 The Commissioner recently consulted on proposals for dealing with alleged breaches of the Code as an alternative to conducting an investigation. The Commissioner's "Consultation on the NI Local Government Code of Conduct for Councillors: Alternative Action" was issued in November 2015, seeking comments on proposed options for alternative action by 15 January 2016.

1.10 The types of alternative actions put forward in the consultation included:

- Deputy Commissioner to write to a councillor to remind them of their obligations under the Code;
- councillor expected to issue an apology;
- rectification to put right a failure to comply (e.g. where there has been a minor and inadvertent failure to register an interest);
- councillor to receive training on the Code;
- mediation;
- matter to be disclosed to another relevant body (e.g. Information Commissioner) with the specialist skills or expertise on the issue of the complaint.

Guidance on Planning

1.11 The Planning Act (Northern Ireland) 2011, which provides for the transfer of responsibility for the majority of planning functions from central government to the new councils, took effect on 1 April 2015. Part 9 of the Code, which deals with planning and which came into force on 1 April 2015, sets out what is expected of councillors in their new roles and responsibilities in relation to planning.

1.12 Advice and guidance was prepared on a wide variety of planning related matters. This includes the guidance “Application of the Councillors’ Code of Conduct with regard to Planning Matters” http://www.planningni.gov.uk/index/common-about-doe-planning/about-reform/guidance_on_planning_element_of_code_of_conduct.pdf and an associated “Summary of Dos and Don’ts”, http://www.planningni.gov.uk/index/common-about-doe-planning/about-reform/summary_of_dos_and_don_ts_planning_element_of_councillors_code_of_conduct.pdf which were issued in February 2015. The aim of this guidance is to advise councillors how they should apply the principles and rules of the Code when it comes to dealing with planning. It also provides protection for councillors by advising them of what they can and cannot do in relation to planning decisions. This guidance is supplementary to the Code, which takes precedence.

1.13 The Department also issued a ‘Protocol for Planning Committees’ in January 2015, highlighting what is considered to be best practice with regards to the operation of planning committees. <http://www.planningni.gov.uk/index/common-about-doe-planning/about-reform/best-practice-protocol-operation-planning-committees-ni.htm>

Training

1.14 During 2014/2015 a training programme for councillors on ethical standards was rolled out which included training on planning issues. The training was commenced prior to the new councils coming fully into operation in April 2015 as the new mandatory Code applied during the transition period to councillors of both the 26 outgoing councils and the 11 new councils. The main emphasis of the training was to prepare councillors for the new ethical standards framework and for the additional functions which councils and councillors would be taking on from 1 April 2015.

CHAPTER 2: PURPOSE OF THE REVIEW

- 2.1. The principles contained in Part 3 (Principles) of the Councillors' Code mirrored the principles that were contained in the Members of the Legislative Assembly Code and Guide (the MLA Code) prior to its revision in 2015. During the policy development stage of the Councillors' Code, a significant number of MLAs were also serving councillors, and it was then considered appropriate that the same principles should apply to both groups of elected representatives.
- 2.2. In 2013, the Assembly Standards and Privileges Committee (the Assembly Committee) started their work on reviewing the MLA Code. As a result of that review, the Assembly Committee made recommendations for changes to be made to the MLA Code, which included a revision of the principles.
- 2.3. As previously mentioned, before a Councillors' Code may be issued by the Department, it must be approved by the Assembly. The draft Councillors' Code was approved by the Assembly on 27 May 2014.
- 2.4. During the Assembly debate on the motion to approve the Councillors' Code, the Minister for the Environment, Mark H. Durkan (the Minister) had indicated that, following the outcome of the then ongoing review of the MLA Code, consideration would be given as to whether any changes to the Councillors' Code would be needed. The revised MLA Code was debated and approved by the Assembly on Tuesday 23 June 2015. The Assembly agreed that the new MLA Code would come into effect following a review of Assembly Standing Order 69¹.
- 2.5. Since the Councillors' Code came into effect in May 2014, a number of concerns have been raised in relation to Part 8 of the Councillors' Code (Rules on decision-making) (see page 28), and in particular Rules 8.1(i) to (l), which deal with organising support/opposition to a recommendation on a

¹New Standing Order 69 - 14/03/16

<http://www.niassembly.gov.uk/assembly-business/standing-orders/recent-amendments/>

matter under consideration, lobbying, complying with political group decisions and acting as an advocate. Some elected representatives have indicated that these particular rules appear restrictive and may prevent a councillor from being a politician.

2.6. The main concerns which were expressed about Part 8 were that Rules 8.1(i) to (l), seemed to be more applicable to decisions on regulatory or quasi-judicial matters, rather than all council decisions.

2.7. The Minister, following his consideration of the changes to the MLA Code and the concerns raised about the Rules in Part 8, indicated that there should be an independent review of Part 3 and Part 8 of the Councillors' Code.

CHAPTER 3 – CODE OF CONDUCT REVIEW WORKING GROUP

Terms of Reference and Membership

- 3.1. The Minister appointed an independent working group, to be known as the Code of Conduct Review Working Group (the Review Group), to carry out the review of Part 3 and Part 8 of the Councillors' Code. The Review Group includes a Chairperson with local government experience in Northern Ireland, an elected representative from a council in Scotland and a senior officer from a council in Wales.
- 3.2. The Review Group therefore has both knowledge and experience of local government in Northern Ireland and practical experience of how the ethical framework and codes of conduct work in other jurisdictions.

Membership of the Code of Conduct Review Working Group

- 3.3. Membership of the Review Group is as follows:

Liam Flanigan (Chair)	Former Town Clerk and Chief Executive of the former Limavady Borough Council
Christopher Thompson	Councillor, South Lanarkshire Council, Scotland
Pauline Elliott	Head of Regeneration and Planning, Caerphilly County Borough Council, Wales.

Secretariat

- 3.4. The Review Group was supported in its work by:
- | | |
|-----------------|------------------|
| Julie Broadway | Secretariat, DOE |
| Mylene Ferguson | Secretariat, DOE |
| Tommy McCormick | Secretariat, DOE |

3.5. The terms of reference of the Review Group were as follows:

“To review Part 3 (the principles) and Part 8 (Rules relating to decision making) of the existing Northern Ireland Local Government Code of Conduct for Councillors (the Code), taking into account other relevant information contained in mandatory Codes of Conduct maintained and promoted within other administrations.

To conduct a pre-consultation exercise with relevant stakeholders, to gain feedback and input, as well as any other evidence as required.

To explore any options for change and, as necessary, make recommendations regarding any possible revisions, which will take into account the need for efficiency, effectiveness, accountability and openness.

All recommendations and options identified to be submitted to the Minister for the Department of the Environment for consideration.”

3.6. The Review Group started work in November 2015 and finished in April 2016, when it presented this report to the Minister.

Acknowledgements

3.7. The Review Group received views, both orally and in writing, from a number of councillors, councils, local government bodies and organisations and we are grateful to those who took time to contribute to this review.

Councillors/Councils

5 individual councillors

Antrim and Newtownabbey Borough Council

Armagh City, Banbridge and Craigavon Borough Council

Belfast City Council

Derry City and Strabane District Council

Fermanagh and Omagh District Council

Lisburn and Castlereagh City Council

Local Government Representative Bodies

National Association of Councillors (NAC)

Northern Ireland Local Government Association (NILGA)

Society of Local Authority Chief Executives (Northern Ireland) (SOLACE (NI))

Other Stakeholders

Council Chief Executives

Local Government Auditor

Northern Ireland Commissioner for Complaints

Ulster Unionist Party

CHAPTER 4 – INFORMATION GATHERING EVENTS

- 4.1. To ensure that as many views as possible could be obtained, the Review Group issued invitations to all councillors in Northern Ireland, to local government representative bodies and other relevant stakeholders, inviting them to attend an information gathering event held in December 2015, when they could make individual short presentations of their views. This invitation exercise was repeated for additional events that took place in January 2016.
- 4.2. Stakeholders were invited to provide :
- views on whether the principles in Part 3 of the Councillors' Code should be amended and, if so, how they should be amended;
 - experiences or examples that could demonstrate that the decision-making aspects of the Councillors' Code may have hindered or appear to hinder the work of a council; and
 - any personal experiences and/or concerns regarding Part 8 of the Councillors' Code.
- 4.3. In addition, the invitation indicated that stakeholders may wish to take the opportunity to provide any additional views on the Councillors' Code in general. Although comments on any issues relating to the Councillors' Code other than those relating to Parts 3 and 8 were not specifically within the remit of the Review Group, it was considered a useful exercise to note these comments as emerging issues for future information.
- 4.4. The Review Group held 3 events as follows:
- | | |
|--------------------|--------------------|
| 9-10 December 2015 | Antrim; |
| 13 January 2016 | Belfast; and |
| 14 January 2016 | Derry/Londonderry. |
- 4.5. In addition to these stakeholder events, the Review Group also indicated that it would also be happy to receive any written views.

CHAPTER 5 – PART 3: PRINCIPLES

5.1. The Councillors' Code, is based on 12 principles of conduct (the Principles), which are intended to promote the highest possible standards of behaviour by councillors. The Principles draw on the seven principles of conduct that the Committee on Standards in Public Life consider ought to underpin public life¹ (the Nolan Principles), and five further principles of conduct that were adopted by the Northern Ireland Assembly under the MLA Code in October 2009 (until the Code was reviewed in 2015).

5.2. The Nolan Principles are-

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

5.3. The additional principles of conduct adopted by the Assembly (and also included in the Councillors' Code) are:

- Public Duty
- Equality
- Promoting Good Relations
- Respect
- Good Working Relationships.

5.4. Part 3 of the Councillors' Code sets out these principles, along with their descriptors (see Figure 1 below):

¹ Committee on Standards in Public Life, Members of Parliament, ministers, civil servants and quangos (First Report) May 1995

PRINCIPLES OF CONDUCT IN THE CURRENT COUNCILLORS' CODE

The Code is based on 12 principles of conduct (the Principles), which are intended to promote the highest possible standards of behaviour for councillors. The Principles draw on the seven principles of conduct that the Committee on Standards in Public Life believed ought to underpin public life¹, and the five further principles of conduct that have been adopted by the Northern Ireland Assembly. As a councillor, you must observe these Principles.

The rules of conduct set out in the Code (the Rules) are the specific application of the Principles. Your compliance with the Rules, which is required under the Code, will help you meet the high standards of conduct promoted by the principles.

The 12 principles of conduct are:

Public Duty

You have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in you.

You have a general duty to act in the interests of the community as a whole.

You have a special duty to your constituents and are responsible to the electorate who are the final arbiter of your conduct as a public representative.

Selflessness

You should act in the public interest at all times and you should take decisions solely in terms of the public interest. You should not act in order to gain financial or other material benefits for yourself, your family, friends or associates.

¹ Committee on Standards in Public Life's 14th report, Standards Matter: a review of best practice in promoting good behaviour in public life.

Integrity

You should not place yourself under any financial or other obligation to outside individuals or organisations, which might reasonably be thought by others to influence you in the performance of your duties as a councillor.

Objectivity

In carrying out council business, including considering public appointments, awarding contracts or recommending individuals for rewards and benefits, you should make choices on merit.

Accountability

You are accountable to the public for your decisions and actions and for the way that you carry out your responsibilities as a councillor and must submit yourself to whatever scrutiny is appropriate to your responsibilities.

Openness

You should be as open as possible about the decisions and actions that you take. You should give reasons for your decisions when required and restrict information only when the wider public interest clearly demands it.

Honesty

You should act honestly. You have a duty to declare any private interests relating to your public duties. You should take steps to resolve any conflicts between your private interests and public duties at once and in a way that protects the public interest.

Leadership

You should promote and support these principles by leadership and example in order to establish and maintain the trust and confidence of your constituents, and to ensure the integrity of your council and its councillors in conducting business.

Equality

You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependants.

Promoting Good Relations

You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms.

Respect

It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and councils. You should therefore show respect and consideration for others at all times

Good Working Relationships

Between councillors – You should work responsibly with other councillors for the benefit of the whole community. You must treat other councillors with courtesy and respect. You must abide by your council's standing orders and should promote an effective working environment within your council.

Between councillors and council employees - The relationship between councillors and employees must at all times be professional, courteous and based on mutual respect. You should show respect and consideration for council employees at all times and ensure that your actions do not compromise their impartiality.

Assembly Review of the MLA Code

- 5.5. As the Principles in the Councillors' Code were aligned to those in the MLA Code, the Review Group considered the findings of the Assembly Committee who carried out a wholesale review of the existing MLA Code in 2014/2015

Background to the Assembly Review

- 5.6. In March 2014, as part of its review of the MLA Code, the Assembly Committee produced an Issues Paper¹. With regard to the principles set out in the MLA Code, the Issues Paper highlighted the UK Committee on Standards in Public Life's publication "Standards Matter"² which reported on the relationship between principles and codes of conduct. The Principles in the revised MLA Code are based on those in the Standards Matter publication.
- 5.7. The revised MLA Code of Conduct and Guidance, contained in the Assembly Committee's "Report on the Review of the Code" which included the proposed revised principles (see **Annex** - page 45), was approved following the Assembly debate held on 23 June 2015. It was agreed at that debate, that Assembly Standing Order 69 should be reviewed to determine whether it should be amended to reflect the provisions of the revised MLA Code. The Assembly agreed on 14 March 2016 that Standing Order 69 should be amended thus giving effect to the new MLA Code and Guide.

Review Group Findings: Principles

- 5.8. The Review Group asked stakeholders to provide views on whether the current principles in the Councillors' Code should be amended and, if so, how they should be amended.

¹ <http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/report/agreed-issues-paper.pdf>

² Committee on Standards in Public Life's 14th report, Standards Matter: a review of best practice in promoting good behaviour in public life.

5.9. In general, stakeholders considered that the principles were an important element of the Councillors' Code. When asked about any amendments that should be applied to this Code, all local government stakeholders considered that it would be advantageous to have as much consistency as possible between it and the revised MLA Code.

5.10. Reasons given for this approach were that this would help to build both public and elected members' understanding of the requirements placed on all elected representatives in Northern Ireland, both in the Assembly and at council level. All stakeholders who provided views on this issue indicated that the principles in the Councillors' Code should be amended to reflect the principles and supporting descriptors as provided for in the revised MLA Code.

Recommendation 1

The principles of conduct in the Councillors' Code should be revised to reflect, as far as possible, those revised principles and descriptors provided in the MLA Code approved by the Assembly in June 2015.

(See Figure 2 for proposed revised principles below:)

PROPOSED REVISED PRINCIPLES OF CONDUCT FOR THE COUNCILLORS' CODE

Selflessness

You should act solely in terms of the public interest.

Integrity

You must avoid placing yourself under any obligation to people or organisations that might try inappropriately to influence you in the performance of your duties as a councillor. You should not act or take decisions in order to gain financial or other material benefits for yourself, your family, or your friends. You must declare and resolve any interests and relationships.

Objectivity

You must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias

Accountability

You are accountable to the public for your decisions and actions and must submit yourself to the scrutiny necessary to ensure this.

Openness

You should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

You should be truthful.

Leadership

You should exhibit these principles in your own behaviour. You should

actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Equality

You should promote equality of opportunity and not discriminate against any person, treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.

Promoting Good Relations

You should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of different religion, political opinion, race, gender, age, sexual orientation and disability.

Respect

You should show respect and consideration for others at all time.

Good Working Relationships

You should work responsibly with other councillors for the benefit of the whole community. Your working relationship with council staff should at all times be professional, courteous and based on mutual respect.

The principle of “Public Duty”

5.11. In the revised MLA Code, the principle of “Public Duty” (which includes the statement “members have a duty to uphold the law”) has been removed from the list of principles and has now become an enforceable rule. This new Rule states:

“You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Member.”

5.12. The Assembly Committee report identified that the duty to uphold the law has been interpreted in the past by complainants in different ways. Some had interpreted it as limiting a MLAs' ability to express their opinions. However, this interpretation could be inconsistent with the right to freedom of expression provided for by Article 10 of the European Convention on Human Rights (ECHR).

5.13. The Assembly Committee stated that it would be entirely inappropriate for the Assembly to seek to prevent or limit the lawful expression by a Member of any political opinion (including opinions on social or moral issues), even when such opinions could be regarded as offensive or inappropriate, and therefore, the duty should become an enforceable rule. The rule would be breached only if a Member is convicted of, or admits, an offence committed whilst acting in his or her capacity as a Member.

Review Group Findings: Public Duty

5.14. The Review Group considered that, as there was overwhelming support to align, as far as possible, the principles of the revised MLA Code with the Councillors' Code, there was also merit in mirroring the approach taken by the MLA Code by removing the principle of Public Duty and making it an enforceable rule in the Councillors' Code.

5.15. The Review Group considered that the arguments presented by the Assembly Committee could also be applied to elected representatives at council level. It was reasonable to expect all elected representatives, no matter which tier of government under which they carry out their functions, to have the freedom to lawful expression, and their duty to uphold the law should only be breached if they were convicted of or admitted to such an offence in their capacity as a councillor.

Recommendation 2

Consideration should be given to making the current principle of "Public duty" an enforceable rule in the Councillors' Code.

Recommendation 3

The Review Group recommends the following wording for the new Rule of Public Duty

“Public Duty

You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Councillor.”

Principles: Aspirational or Enforceable

5.16. The principles in the current Councillors’ Code are enforceable, whereas the principles in the revised MLA Code are aspirational. The distinction between those matters which are aspirational and those matters which are enforceable in a code of conduct differentiates between the ideals and goals to which someone should aspire and the rules by which they must abide. All stakeholders, with one exception, considered that the principles should be amended to reflect the aspirational approach taken in the revised MLA Code.

Review Group Findings: Aspirational or Enforceable

5.17. The Review Group considered the findings of the Assembly Committee who conducted the review of the MLA Code. The Assembly Committee took into account evidence from the report from the Committee on Standards in Public Life’s publication “Standards Matter”¹

¹ Committee on Standards in Public Life’s 14th report, Standards Matter: a review of best practice in promoting good behaviour in public life.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf . That report includes a statement from the paper

“Public Ethics and Political Judgement”

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336977/2902536_CSPL_PublicPoliticalEthics_acc.pdf commissioned in

2014 by the Committee on Standards in Public life which states that *“Principles alone are often not enough as a guide for behaviour in everyday life. Research undertaken with the public demonstrates that there can be genuine disagreement about what they imply in specific circumstances”*. The paper also states that *“many members of the public think of principles such as honesty and integrity as referring to personality traits, thereby confusing the person with the office holder, so that it was difficult to distinguish between making a judgement about what sort of a person an elected representative is and what sort of office holder they may be”*.

5.18. The Assembly Committee looked at the relationship between principles and rules in codes of conduct of other legislatures (at Parliamentary level) and noted¹ *“that at the House of Commons, the House of Lords and the Scottish Parliament the principles are both aspirational and used for guidance when applying the rules but are not in themselves enforceable.”*.

5.19. This relationship between aspirational principles and rules at Parliamentary level is replicated in local government codes of conduct within certain jurisdictions in the UK. In Wales, the Public Services Ombudsman has produced guidance relating to the Welsh local government Code of Conduct. This guidance states that *“the principles are not part of the Model Code, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code.”* The Scottish local government code of conduct states that *“the general principles upon which the Code of Conduct is based should be used for guidance and interpretation only”*. In England, however, the local government ethical standards framework which is provided for in the Localism Act 2011, simply provides that a council must

¹ Paragraph 46 of the Committee on Standards and Privileges Review of the Code of Conduct – issues Paper.

ensure that any adopted code of conduct, when viewed as a whole, is consistent with the 7 Nolan Principles.

5.20. In considering the different relationship between the principles and the rules in the Councillors' Code compared to codes in other jurisdictions, the review group, during their information gathering events, asked stakeholders whether they considered that the principles should be enforceable in themselves or aspirational. One respondent considered that while principles may have an aspirational element they are also clear behavioural standards in themselves that are universally accepted. They suggested that if a councillor follows the principles as the basis for their conduct, they would be less likely to behave in a way that would constitute a breach of the rules.

5.21. One stakeholder, when asked if it is right that someone could be found in breach of a principle, considered that it might be difficult to establish and that the principles should be regarded as the spirit of the Councillors' Code rather than as rules. Another stakeholder believed that it would be difficult to prove (or disprove) that a councillor had failed to display, for example, the principle of "Leadership", as people's perceptions can vary.

5.22. Another stakeholder considered that in some instances it could be argued that the principles work against the rules. For example, taking into account the concerns relating to Part 8 of the Councillors' Code (namely Rule 8.1(i) to (l), - see Chapter 6 page 28), it is difficult to show "leadership" when councillors are nervous or hesitant in relation to such issues as quasi-judicial decisions (e.g. planning matters).

5.23. The Review Group concluded that, if the application of the principles and the enforcement of the rules were clearer, stakeholders would feel more confident in the Councillors' Code.

5.24. The Review Group also noted that in the MLA Code and in relation to local government Codes in other jurisdictions, the principles of conduct are aspirational.

Recommendation 4

The principles of conduct in the Councillors' Code should be considered aspirational, in line with the revised principles in the MLA Code approved by the Assembly in June 2015.

5.25. Paragraph 3.2 of the current Councillors' Code states that:

“The rules of conduct set out in the Code (the Rules) are the specific application of the Principles. Your compliance with the Rules, which is required under the Code, will help you meet the high standards of conduct promoted by the Principles.”

5.26. To give effect to Recommendation 4 and clarify that the principles are considered to be aspirational, this paragraph of the Councillors' Code will need to be amended.

Recommendation 5

The Review Group recommends that paragraph 3.2 in Part 3 of the current Councillors' Code should be revised as follows -

“Councillors should observe the following principles of conduct. Whilst these principles will be taken into account when considering the investigation and determination of any potential breaches of the rules of conduct, the Principles are not themselves enforceable.”

CHAPTER 6 - PART 8: RULES RELATING TO DECISION MAKING

- 6.1. Part 8 of the Councillors' Code sets out the rules for councillors when they are conducting the business of the council (see Figure 3 below):

Figure 3

RULES RELATING TO DECISION-MAKING IN THE CURRENT COUNCILLORS' CODE

- 8.1 When participating in meetings or reaching decisions regarding the business of your council, you must:
- (a) do so objectively, on the basis of the merits of the circumstances involved, and in the public interest;
 - (b) have regard to any relevant advice provided by your council's officers, in particular, by the chief executive, the chief financial officer (where appropriate) or the council's legal advisers;
 - (c) take into account only relevant and material considerations and discount any irrelevant or immaterial considerations;
 - (d) give reasons for your decisions, when required to do so, in the interests of fairness, openness and accountability and in accordance with any statutory requirements;
 - (e) act in accordance with any relevant statutory criteria;
 - (f) act fairly and be seen to act fairly;
 - (g) ensure that all parties involved in the process are given a fair hearing (insofar as your role in the decision making process allows);
 - (h) not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any decision;
 - (i) not organise support for, or opposition against, a particular recommendation on the matter being considered;
 - (j) not lobby other councillors on the matter being considered;
 - (k) not comply with political group decisions on the matter being considered, where these differ from your own views; and
 - (l) not act as an advocate to promote a particular recommendation in relation to the matter being considered.

- 6.2. Some concerns have been raised about the provisions in Part 8 of the Councillors' Code, with some elected representatives indicating that some of the rules in Part 8 may hinder a councillor from behaving fully as a politician or public representative.
- 6.3. When inviting representations on Part 8 of the Councillors' Code, the Review Group asked stakeholders for details of any experiences or examples that could demonstrate that the decision-making rules in the Councillors' Code may have hindered or appear to hinder the work of a council and provide any views or share any personal experiences and/or concerns regarding Part 8 of the Councillors' Code.
- 6.4. The Review Group established from the views expressed that, when undertaking day to day business, councillors do not find the application of the rules in Part 8 straightforward. Some stakeholders indicated that they considered there was a lack of suitable training or the availability of a recognised point of contact/person for advice or clarification.
- 6.5. Any difficulties raised in relation to Part 8 of the Councillors' Code were in respect of Rules 8.1(i) to (l) (see Figure 3 page 28). Most stakeholders, when commenting on these rules, provided evidence relating to planning committee scenarios. It was from their experience of serving on, or interacting with, a planning committee, that stakeholders were able to offer examples to support their concerns. The main issues stakeholders identified were whether it was correct or not to:
- participate in informal discussions;
 - offer opinions; and
 - react to approaches by the public to provide assistance.
- 6.6. Stakeholders indicated to the Review Group that, when councillors were being approached by the public or by other councillors regarding a matter to be raised at a planning committee or a general issue of concern within their area, councillors were unsure how to react due to uncertainty in the application of the Councillors' Code. Some councillors indicated that they

either refrained from undertaking certain actions (e.g. participating in informal planning discussions, offering opinions and reacting to approaches by the public to provide assistance), as they feared that, as a result of taking such action, they might be in breach of the Councillors' Code.

6.7. While most councillors were clear in their roles in relation to planning, one stakeholder advised that they were under the impression that councillors could not make representations to the planning committee on issues that had an impact on their district electoral area. The Review Group was also advised by stakeholders that some councillors were either ignoring the Councillors' Code or using it as a guidance document only due to the uncertainty about some of the rules in Part 8. This uncertainty had led to some councillors acting on matters and making decisions in the hope that they were acting within the rules so as not to be accused of inaction.

6.8. Inconsistencies were also conveyed to the Review Group regarding site visits relating to planning applications. Councillors, whilst mindful of the rules relating to objectivity, fairness, bias, lobbying and organising support for/against issues (Rules 8(a), (f), (h), (j) and (i) respectively) were unsure of their application on site visits. Some stakeholders considered that site visits were an extension of the planning committee meeting whereas others did not. Some councils regularly conducted a large number of site visits whereas some only did so as required. Clarity was also required on the journeys to and from the site locations, which were usually undertaken on a coach organised by the council. Some stakeholders considered it inappropriate to discuss issues with other committee members during these journeys, whereas others were unclear if it was acceptable to do so or not.

6.9. Some stakeholders considered that the correct behaviour required by Part 8 of the Councillors' Code would only become clear once a formal complaint was raised on these issues and decided upon. They considered that this would provide welcome clarity on such matters, as there was an apparent lack of consistency of approach across the 11 councils.

Rule 8.1 (a)-(h)

6.10. Stakeholders generally supported the application of Rules 8.1(a) to (h) to all council decisions as it was considered that this would ensure a fair, open and impartial approach to the decision-making in councils.

6.11. Some stakeholders stated that they were not confident in what they could or could not do when approached about issues within their district electoral area or on matters tabled on the committee agenda. The evidence also highlighted that there is a need for specific training in relation to all quasi-judicial committees (e.g. planning and licensing). The Review Group sought, and obtained, further evidence to support this.

Rule 8.1(i)

6.12. Rule 8.1(i) states that when a councillor is participating in meetings or reaching decisions regarding the business of the council he/she *“must not organise support for or opposition against, a particular recommendation on the matter being considered”*.

6.13. Some stakeholders considered that Rule 8.1(i) was anti-democratic in that it restricted local representatives from acting on behalf of their constituents, whether in support or opposition to a particular matter. For example, if a telecommunications mast was being considered and residents were not in favour, the rule seemed to prevent their local councillor from presenting those negative views on the issue. Another stakeholder considered that it got in the way of democracy at a local level.

6.14. In addition to the above mentioned uncertainty, some councillors considered that they were being curtailed by this rule on what they could or could not do in relation to the needs of their constituents. Representations to the Review Group indicated that this rule was considered to prevent a councillor leading, for example, a public initiative against closure of a local hospital, or gathering support from their own or another party ahead of a council meeting to ensure a particular view is understood, or to press for a specific

outcome to a decision. Other stakeholders considered that it prevented them from lending support to public protests against a proposed council policy or to seek the backing of their own political party. The Review Group noted that there were difficulties arising from the uncertainty regarding the level of representations which could be provided by both those councillors representing views of their constituents and those councillors who were members of committees making decisions.

6.15. The Review Group were informed that citizens expected a high level of communication from councillors regarding the protection of communities and services in their area and to voice their constituents' concerns about issues. Stakeholders considered that Rule 8.1(i), in stipulating that a councillor should not organise support for or opposition to a matter, was at odds with a councillor's ability to adequately represent their constituents.

6.16. Some councillors considered that it created grey areas on what exactly a councillor could or could not do, depending on whether they were a member of the council committee in question. For example, some stakeholders considered if they had been approached by their constituents complaining about a proposed planning application, it was not clear whether they could discuss the matter with councillors at the planning committee or speak on their behalf to the planning committee. This was the case whether they sat on the planning committee or not. Other stakeholders, however, considered that they could approach their planning committee to discuss a tabled matter if they were not members of the committee. Equally, some stakeholders knew that they could put forward the views of their constituents but there seemed to be no consensus on whether they could then vote on the matter.

6.17. In conclusion, the Review Group established from the evidence that there is generally a difference of approach across councils to how this rule would apply. Stakeholders were conscious of their duty to address the needs of their constituents but this inconsistency across councils when applying Rule 8.1(i) to the different roles undertaken by a councillor was causing problems.

Rule 8.1 (j)

- 6.18. Rule 8.1(j) states that when a councillor is participating in meetings or reaching decisions regarding the business of the council “*he must not lobby other councillors on the matter being considered*”.
- 6.19. Some stakeholders considered that, if they had been elected on a particular mandate that included either supporting or rejecting a proposal, it would be expected that they would get involved in influencing and actively promoting the cause on behalf of their constituents. The rule would appear to be at odds with the kind of action councillors would consider helpful and justifiable when aiming to promote and resolve an issue.
- 6.20. One stakeholder queried how agreements could be reached if councillors were prohibited from participating in this type of discussion, as some decisions are based on compromise and at times, what happens outside of a meeting to consider and decide on a matter is where the work is done.
- 6.21. It also came to light that there appeared to be confusion over what a councillor could or could not do in these circumstances. It was generally assumed that the only option open was to either take action and then, if needs be, have to face the consequences (i.e. a formal complaint) or else do nothing for fear of doing something wrong.
- 6.22. The Review Group were informed by stakeholders that clarity was lacking on the correct parameters within which a councillor could operate without breaching Rule 8.1(j). This uncertainty applied whether a councillor was acting as a council member, a committee member or acting on an outside body on behalf of the council. One stakeholder gave the example that, if a councillor were involved in a church committee and was approached by that committee seeking advice or information on a planning issue, it was difficult to know, in that type of instance, whether it was a breach if information to assist was provided by the councillor.

Rule 8.1 (k)

6.23. Rule 8.1(k) states that when councillors are participating in meetings or reaching decisions regarding the business of the council they *must not comply with political group decisions on the matter being considered, where these differ from their own views.*

6.24. Stakeholders also raised concerns about this rule. Some considered that when there were a number of councillors from the same political party in a council, political party influence would be applied to those councillors on a regular basis, (i.e. party whip). This rule would seek to prevent such party influence so that those councillors would be required to act more like independents.

6.25. One stakeholder stated that while they would listen to the views of their political party on an issue, they would still consider it right to assess all the facts before making their decision on a particular issue. They would make a final decision based on all the available evidence presented at the meeting. Some other stakeholders indicated that this was not always the approach taken by councillors.

Rule 8.1 (l)

6.26. Rule 8.1(l) states that when a councillor is participating in meetings or reaching decisions regarding the business of the council “*he must not act as an advocate to promote a particular recommendation in relation to the matter being considered*”.

6.27. Similar comments were made to those expressed in relation to 8.1(i) and 8.1(j). Stakeholders indicated that the Rules in the Councillors’ Code were unclear on what they could actively promote on behalf of a constituent, or on how they could lobby on topics that they may have canvassed on prior to an election. They considered that they had to remain silent or neutral on the matter as this is what would appear to be required by this rule.

6.28. Another stakeholder queried how anything could be changed if a council was expected to just rubber stamp everything. The benefits of networking with other councillors to try to find common ground on matters was considered by one stakeholder as a best practice approach as it could assist in resolving matters to a satisfactory conclusion.

6.29. The Review Group, recommends that clarity should be provided in relation to the Rules set out in Part 8 of the Councillors' Code:

Recommendation 6

The wording of Rule 8.1 in the Councillors' Code should be revised, so that:

- **Rules 8.1(a) to (h) apply to all decisions;**
- **Rules 8.1(i)-(l) applies to quasi-judicial decisions (e.g. planning, licensing, etc) and to decisions on appointments and the awarding of contracts.**

Recommendation 7

The Review Group recommends that Part 8 of the Code should be revised as follows

“PROPOSED REVISED RULES ON DECISION-MAKING

8. RULES RELATING TO DECISION-MAKING

8.1 It must be acknowledged that councillors fulfil different roles at different times.

For example, they can sit as a council member, committee chair, member of a committee or of their party political group, representing a district electoral area or their constituents or as a council-appointed member of an outside body.

Some of these roles can cause members to be in conflict. However, it is up to each individual member to decide which role they are carrying out at any time and observe the rules accordingly.

General Rules – Applicable when making all decisions

When participating in meetings or reaching decisions regarding the business of your council, you must

- (a) do so objectively, on the basis of the merits of the circumstances involved, and in the public interest;
- (b) have regard to any relevant advice provided by your council's officers, in particular, by the chief executive, the chief financial officer (where appropriate) or the council's legal advisers;
- (c) take into account only relevant and material considerations and discount any irrelevant or immaterial considerations;
- (d) give reasons for your decisions, when required to do so, in the interests of fairness, openness and accountability and in accordance with any statutory requirements;
- (e) act in accordance with any relevant statutory criteria;
- (f) act fairly and be seen to act fairly;
- (g) ensure that all parties involved in the process are given a fair hearing (insofar as your role in the decision making process allows);
- (h) not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any decision;

Additional Rules – Decisions regarding quasi-judicial issues, making appointments and awarding contracts

In addition to the general rules which relate to all decisions, for decisions in relation to quasi-judicial issues, making appointments and awarding contracts, you must also:

- (i) not organise support for, or opposition against, a particular recommendation on the matter being considered;
- (j) not lobby other councillors on the matter being considered;

- (k) not comply with political group decisions on the matter being considered, where these differ from your own views; and
- (l) not act as an advocate to promote a particular recommendation in relation to the matter being considered.”

CHAPTER 7: COUNCILLORS' CODE: EMERGING ISSUES

- 7.1. During evidence gathering, the Review Group established that there was overwhelming support for the Councillors' Code and the majority of people/organisations who made representations considered that it provided suitable protections for councillors and their council.
- 7.2. However, the collective evidence from stakeholders highlighted an ongoing lack of clarity on the correct interpretation of the Councillors' Code, how the rules should apply and a lack of understanding of parts of the ethical training already provided. The Review Group recognised a need for further training and the provision of day to day support and guidance on the Councillors' Code. This lack of such important resources has created a negative impact for some councillors and/or councils.
- 7.3. Although these issues lay outside the remit of the Review Group, the Group considered it important to highlight those issues consistently raised, so that they can be noted for the future review of the ethical standards framework that will be carried out.

Training (and Mandatory Training)

- 7.4. The Review Group noted the concerns raised by stakeholders on the level of training that they considered should be delivered to enable councillors to have a better understanding of the requirements of the Councillors' Code. This was evident from stakeholder concerns regarding Part 8, and in relation to the clarity needed to ensure that, as councillors, they would be confident in the actions they could take. Stakeholders identified that this training should also include the dos and don'ts of the Councillors' Code. As a result, the Review Group recommends that consideration should be given to the following.
 - All councils should consider drawing up specific training plans and making arrangements for ongoing training provision on the Councillors' Code and the ethical standards framework for all councillors. Regular

training of all aspects of planning should also be considered. An overall uniform approach to this training by all councils should be considered as a priority with the possibility of councils sharing sessions to encourage networking and uniformity of approach.

- This training should include the dos and don'ts of the Councillors' Code that apply to every day duties and to the different roles that councillors may occupy, both within the council environment and any obligations within their community. This would include clarification on the rules relating to their public and private life and when the code would apply in these instances.
- Councils should develop on-going ethical training plans to target individual councillors who may be co-opted onto councils at any time or for new councillors elected in future years;
- Training about quasi-judicial committees is vital for councillors and should be mandatory, especially for those councillors who are appointed to positions on these committees. Chairpersons of these committees should clarify before any meeting that all councillors have been trained before they can take any part in proceedings. This would act as a protection for those councillors and build ongoing confidence in understanding the requirements of their role if they are serving on these committees as well as confidence for those councillors who have to interact with these committees;
- Provision for re-training or refresher training should be an element of the training plans for the ethical standards.

A source for Advice/Support/Guidance (i.e. Critical Friend/ Monitoring Officer/ Legally Qualified person)

7.5. Stakeholders indicated to the Review Group that it would be helpful to have some resource who could give day to day practical advice, guidance and/or clarification on the Councillors' Code, should an issue require it. From the

evidence provided, there was an apparent lack of consistency of approach to the Councillors' Code across the 11 councils and there is currently no reference point to provide assistance in the correct application of the Councillors' Code to relevant matters. The Review Group recommends that consideration should be given to the appointment of a person, or using an existing resource within a council, who would be tasked with providing advice and guidance and who may also alert any councillor who may be erring towards breaching the Councillors' Code.

- 7.6. In the rest of the UK, Monitoring Officers are responsible for calling members to account when they breach or are in the process of appearing to breach the code of conduct. Evidence suggests that in the vast majority of cases, a breach is an error of judgement due to lack of experience – and this would seem a likely scenario in Northern Ireland, due to the new arrangements and powers available to councillors and councils as a result of local government reform.
- 7.7. Monitoring Officers have the ability to have a quiet word in instances of minor breaches – resolving the issue quickly and discreetly, and thus avoiding any embarrassment, prior to any formal written complaint. They also ensure that a uniform approach is applied to queries and guidance, which is advantageous to progress.
- 7.8. This role should be regarded as an additional support for councillors, helping, guiding and supporting councillors and officers in ethical matters. As the position is usually allocated to the Head of Legal Services in those councils, they can also attend critical meetings in their professional as well as ethical capacity which removes any pressure and/or vulnerability to proceedings. A uniform approach should be applied.

Uniformity of Roles of Councillors – job descriptions – Includes Quasi Judicial Committee Requirements

- 7.9. Stakeholders had indicated to the Review Group that from their experience of serving on or interacting with committees in councils, there was a lack of

confidence in what they could or could not do when approached about issues within their district electoral area or on matters tabled on a committee agenda (see paragraph 6.6). The Review Group noted that the stakeholder evidence highlighted the inconsistency in how these matters were dealt with by councillors and councils. The Review Group recommends that the following paragraphs should be considered when developing policies in relation to the Councillors' Code.

7.10. As indicated the evidence provided suggests that some councillors are unaware of the responsibilities they have, how they should operate in that role or what is expected of them. This was very apparent for newly elected councillors, who were unsure of the different roles and how they should interact with them.

7.11. Councillors perform different roles and consideration should be given to drawing up outline job descriptions (with relevant associated training) – for example, the role of –

- party group leader,
- party member,
- committee chair,
- committee member, and/or
- councillor representing a district electoral area.

7.12. The specific training outlined in paragraph 7.4 above should align with these roles and how the Councillors' Code impacts on the duties – those who have a position of responsibility need to be aware of all the dos and don'ts that would apply to them and to those that they may come into contact with as a direct result of that position.

Register of Interests

7.13. During the evidence gathering a number of stakeholders indicated that there was some confusion over the declaration and registration of interests. The Review Group was informed that stakeholders were often unclear on when

certain interests should be declared and registered and also what action should be taken by a councillor following their declaration of an interest i.e. could they then speak on a topic or vote on a related decision?

7.14. The Review Group would suggest that people in public life must avoid situations in which private interests may have an effect on their public duties. Councillors should always be mindful that public confidence in the decision-taking process of a council and its councillors may be affected where there appears to be a conflict of interest. The integrity of the councillor and the council may be called into question where the non-disclosure of a relevant interest is revealed at a later stage.

7.15. The Review Group recommends that councils put in place procedures to ensure that the requirement for councillors to declare/register all relevant interests is upheld. The following actions should be considered-

- training should be provided on a council's procedures for declaring interests and the subsequent level of councillor involvement in discussions/votes;
- a council's register of interests should be regularly reviewed to ensure it is kept up to date;
- councillors should be asked, at regular intervals, to update the details about their interests; and
- as part of a council's risk management strategy, a robust approach should be taken to manage the risk of the non disclosure of interests and this should be subject to internal audit by councils.

Quasi-Judicial Committee Requirements i.e. Planning Committees

7.16. The examples provided to the Review Group related mainly to planning committee issues, however, the Review Group considers that the same issues would also extend to other quasi-judicial committees and that similar considerations should be applied to these committees also.

7.17. The Review Group would therefore suggest that consideration should be given to the following:

- an optimum size for planning committees should be considered;
- uniform training should be a mandatory requirement (see paragraph 7.4 above);
- site visit protocols should be introduced and the roles of all possible interested parties clarified, together with clear roles on when the committee is “in committee”;
- a clear understanding of the role of councillors who may deal with planning matters in their area but who do not sit on council planning committee is required;
- the presence of an informed Monitoring Officer/legally qualified person who can provide immediate guidance and/or advice (see paragraph 7.5 above).

Complaints Procedure

7.18. Some stakeholders indicated that they considered the complaints process was too secretive and the confidentiality requirements surrounding the investigative process prevented both councillors and their legal representatives from revealing any details of the investigation and the final outcome.

7.19. In addition, some stakeholders considered that there was a need for a frank analysis of the approach and impact of investigations of alleged breaches, around the methods, timescales and proportionate (or disproportionate) impact of the process, regardless of the outcome.

7.20. Several stakeholders considered that there should be a screening out exercise which would rule out vexatious, mischievous or trivial complaints and the introduction of a shorter, less formal process alongside the current process that could be operated within the council. This would resolve simpler complaints quickly and reduce the level of anxiety and apprehension that is caused.

7.21. The Review Group concluded that it is evident that councillors are not fully conversant with the requirements of the complaints procedure, or the role expected of them when an allegation of a breach of the code is aimed at them or if they decide to make a formal complaint that an alleged breach had occurred. Clarity on the steps taken within the complaints procedure and clarity on the role expected of any parties involved would be helpful.

7.22. The Review Group recommends that consideration should be given to the following:

- education/training in the complaints process, from when a written complaint is submitted until resolution, and the timespend expected;
- clarity on what a councillor's role would/should be when they are a complainant or a person accused of an alleged breach; and
- clarity on when/if the process can be communicated, and how the outcome can be reported.

The Principles of Conduct

Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and should never undertake any action which would bring the Assembly into disrepute. The Assembly encourages and expects Members to observe the following principles of conduct.

Whilst these principles will be taken into account when considering the investigation and determination of any potential breaches of the rules of conduct, the principles are not themselves enforceable.

The Seven Principles of Public Life

Selflessness: Members should act solely in terms of the public interest.

Integrity: Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity: Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability: Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness: Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty: Members should be truthful.

Leadership: Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Additional Assembly Principles of Conduct

Equality: Members should promote equality of opportunity and not discriminate against any person, treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.

Promoting Good Relations: Members should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of different religion, political opinion, race, gender, age, sexual orientation and disability.

Respect: Members should show respect and consideration for others at all time.

Good Working Relationships: Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members' working relationship with Assembly staff should at all times be professional, courteous and based on mutual respect."

