

**Northern Ireland Local Government Code of Conduct for Councillors****General**

- On a general point, the Council would note that the guidance in relation to the Code of Conduct has not yet been issued. It is therefore difficult to give proper consideration to the Code in the absence of the supporting guidance.
- The Council note that grafted into the code are certain legal duties which exist independent of the Code. The Council would seek clarification as to whether the Code therefore provides for individual sanction to be imposed in relation to those legal duties that exist independently from the Code.
- The Council welcome the amendment to the Local Government Bill which provides a right of appeal to councillors who are deemed to be in breach of the Code on the basis that the absence of an appeal would be unlawful. In light of the draft Code this will be important - much of it is high level principles against which members might have a difficulty in discerning if a particular course of conduct is, or could, amount to a breach. There are accessible English standards cases that could have provided a reference point to give greater clarity.

**Background**

- Paragraph 15 refers to “a body of precedent”. This in effect means that there is acceptance that the Commissioner will establish the benchmark for conduct as opposed to the Code. A principle of law is that law should have some degree of certainty thus an individual may judge with some certainty what type of conduct falls short or transgresses the required standard.

Penal provisions are construed in their narrowest context as a general rule. It appears that the draft Code is capable of giving rise to sanctions but which does not of itself give clarity - a point that is tacitly acknowledged in paragraph 15 of the introductory text.

## Comments on the draft Code

- **Requirement to comply with the Code (p.14)** – the Council welcome the provision in Part 2 to apply the Code to all councillors, including councillors of existing councils until those councils are dissolved in April 2015.
- **Enforcement of the Code (p.16)** – the Council are supportive of the role of the Commissioner but would recommend that the supporting guidance provides clarity around the enforcement process, including: the making of a complaint; target timescales for resolving complaints; the investigation process; dealing with malicious complaints and whether or not fees will be chargeable if a complaint is found to be vexatious.
- **Rules of General Conduct (p.20)** – under 4.14 duty to have regard to advice – the Council feel that the Code should also reference the power of surcharge which has been retained.
- Under paragraph 4.16 disclosure of information - the code duplicates a legal duty under DPA which also has a sanction/penalty for disclosure. Perhaps rather than creating a freestanding further obligation, the code should reference the existing legal duty. The worst cases would be picked up by the disqualification route following conviction.
- Under paragraph 4.18 (p.23) “Dealings with your council” – it is unclear as to what “substantial land, property or other interests” means in practice. How would a Member decide if any such interest is substantial? In addition, what does “friend or associate” mean in relation to planning applications? As it currently stands, this could result in a high degree of uncertainty. Will this section apply only if it is the Councillor themselves who make the application on behalf of such a person and does it not apply if the person themselves make the application?
- **Registration of Interests (p.24)** – paragraph 5.2 (vii) identifies a personal interest in respect of “*any land where the landlord is your council and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified under sub-paragraph (iv) above*” - would this also apply to outside bodies to which Members are appointed by the Council? An example may be a waste management group appearing before a committee.

In respect of paragraph 5.2 (ix) – this would impact when Trade Unions address Council or Committee if any Members are also in the Union. The Council would recommend that the Department further examine the potential impact of that instance.

The section on **sensitive information** (5.6 to 5.8) places a responsibility on CEOs that might in practice present them with some difficulty. More discussion is required in relation to this issue. It would be helpful if either the Code, or the associated guidance gave a few examples of what would be regarded as ‘sensitive information’.

- **Lobbying and Access to Councillors (p.28)** – paragraph 7.5 could have serious implications for Councillors in dealing with planning and licensing applications. It must be ensured that Councillors are fully aware of how some present practices will not be able to be replicated in the new arrangements. There must be a thorough communication exercise with the public and agents as the current system *encourages* lobbying of elected members.