



Ethical standards in public life: consultation on Model Code of Conduct for board members of devolved public bodies



PEOPLE, COMMUNITIES AND PLACES

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Introduction

Background

In line with Section 1 of the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) ('the Act'), Scottish Ministers are required to produce a Model Code of Conduct for members of devolved public bodies ('the Model Code'), as well as a Code of Conduct for Councillors ('the Councillors' Code'). The Act stipulates that Ministers must issue a Model Code – including any revisions – only once it has been laid before, and approved by, the Scottish Parliament.

The Model Code sets out the standards that all board members of organisations listed in Schedule 3 of the Act must comply with when carrying out their duties, and each organisation should produce their Code of Conduct based on the Model Code. The Model Code is supported by [supplementary, independent guidance](#) published by the [Standards Commission for Scotland](#) ('the Standards Commission'), which provides more detail on what the Model Code means for board members in practice.

The [Ethical Standards Commissioner](#) ('the Commissioner') and the Standards Commission are two separate, independent statutory organisations.

The Commissioner is responsible for both public appointments and public standards. Where public standards are concerned, the Commissioner can investigate a complaint about a member of a devolved public body who is alleged to have contravened the appropriate public body's Code of Conduct. Likewise, the Commissioner can also investigate complaints about a councillor in respect of the Councillors' Code.

The Standards Commission has responsibility for enforcing compliance with the Codes of Conduct and providing general guidance on their interpretation. Following initial investigation by the Commissioner, the Standards Commission adjudicates on cases of alleged contravention of the Codes of Conduct. Where a hearing is held, the Standards Commission has the power to impose sanctions.

Purpose of this consultation

The Model Code was last reviewed in 2014 and the Scottish Government acknowledges that various developments have taken place in society since then. We think that it is important to take stock of these changes and provide end-users with an opportunity to contribute to a revised Model Code. For example, we want to highlight the increasing role played by social media in our society, while underlining the importance of respectful behaviour and highlighting that bullying and harassment should not be tolerated under any circumstances. At the same time, we

also want to make the Model Code simpler and easier to understand, so as to ensure that the highest standards of conduct are maintained in our public bodies.

As such, on 19 October 2020, we launched 'Ethical standards in public life: consultation on model code of conduct for board members of devolved public bodies', to seek views on current proposals for a revised Model Code.¹ To respond to any changes resulting from the consultation, the Standards Commission will also review and revise its own guidance to support the Model Code.

The consultation contained 12 questions in total and this comprised a mixture of both closed and open-ended questions. The first three questions explored whether respondents had used the Model Code before (and, if so, in what capacity) and whether they agreed there is a need to review the current Model Code. The remaining questions asked respondents to comment on each individual section of the revised draft Model Code (from Section 1 to Annex A), how clear and easy the revised Model Code is to understand and, last, whether they had any final comments on the proposed revisions to the Model Code.

Methodology and responses received

We took every opportunity to promote the consultation to end-users of the Model Code, and those who chose to take part had the opportunity to participate either as an individual or collectively on behalf of an organisation. The consultation closed on 8 February 2021 and received 46 responses. This included one duplicate response, which was subsequently removed from the analysis.

The remaining 45 responses were analysed using MS Excel, with the responses to each question being analysed in turn. In addition to the analysis of the closed questions, a thematic analysis of the open-ended responses was conducted in order to identify key themes in relation to each question.

It is not possible to reflect every point of detail that respondents submitted in this consultation analysis, since detailed and specific comments were received on many different paragraphs within the Model Code. This analysis focuses mainly on points where multiple respondents made comments, and which thus emerged as themes of broader interest. However, all responses to the consultation will be carefully considered by the Scottish Government and key stakeholders, to ensure the revised version of the Model Code is fit for purpose.

Of the 45 responses which were analysed, 29 (64%) were received from organisations and 16 (36%) from individuals.

¹ For more information on the consultation, including the consultation paper, see the [Scottish Government](#) and [Citizen Space](#) websites.

Thirty respondents (67%) provided information about their organisation.² Table 1 below summarises the types of organisations represented in the analysis where the relevant information was provided. The percentages are expressed as a proportion of the 30 respondents providing organisational information.

Table 1: Respondents by type of organisation (n=30)³

Type of public body	No. of respondents (%)
Executive non-departmental public bodies	12 (40%)
Advisory non-departmental public bodies	2 (7%)
Public corporations	1 (3%)
Health bodies	3 (10%)
Non-ministerial offices	2 (7%)
Commissioners and ombudsmen	1 (3%)
Other significant national bodies	1 (3%)
Integration Joint Boards	5 (17%)
Regional transport	2 (7%)
Education	1 (3%)
Total	30

As shown above, respondents from executive non-departmental public bodies made up the largest proportion (12, or 40%) of the responses where information on organisation was provided.

It is important to highlight that the Model Code covers a wide range of organisations across a variety of sectors, each with their own remit and priority areas. This makes it challenging to produce one Model Code that will fully satisfy the needs of each individual organisation. Moving forward, we will ensure that the development of the revised Model Code takes cognisance of the views expressed across all organisations and sectors as far as possible.

It is also important to note that the views of respondents to the consultation are not necessarily representative of those of the wider population of interest – including board members, other staff members within public bodies and their stakeholders more broadly. This is because individuals and organisations who have a keen

² This includes one respondent who previously reported that they were responding as an individual.

³ In Table 1, where possible, respondents are classified according to the Scottish Government's [national public bodies directory](#). Given that the Act includes provisions for some public bodies who are not included on the directory (for example, Integration Joint Boards), this classification has been expanded for the purposes of this report.

interest in any given topic, those who hold strong views, and those who have the capacity to respond are more likely to take part in a consultation than those who do not. As such, the responses to any consultation are a self-selecting group which may be biased in certain ways that we do not know.

Reflecting this, the analysis is primarily qualitative in nature. We do not try to identify the percentage of respondents who held particular views but instead focus on understanding which topics were of particular interest or concern to the respondents, and the range and strength of views expressed in relation to those topics.

Use of the Model Code

Question 1: Have you used the Model Code before?

All 45 respondents provided an answer to Question 1. Of these, the vast majority (38 respondents, or 84%) of respondents indicated that they have used the Model Code before, while a small proportion (7, or 16%) reported that they have not.

Respondents from organisations were more likely to report using the Model Code than individuals. Of the 29 responses from organisations, 28 (97%) indicated that they have used the Model Code before, while the corresponding figure among 16 individuals was 10 (63%).

Question 2: If Yes, in what capacity have you/do you use the Model Code? If you used the Model Code as a Board Member could you please name the public body? Please provide your comment.

Of all 45 respondents, 38 (84%) provided information about the capacity in which they use – or have used – the Model Code. The remaining seven respondents (16%) did not provide any comments.⁴ Of the 38 respondents who provided the relevant information, a majority indicated that they have used the Model Code as a member – or, in some cases, as Chair – of a public body board, or alluded to the Model Code being used by their board. These respondents referred to the use of the Model Code by boards of public bodies in a range of sectors – for example, health, housing, transport and justice.

Some respondents framed their use of the Model Code within the context of their organisation's own codes of conduct and/or good governance, highlighting that the Model Code has been useful in helping their organisation to shape these internal codes. For example, as one respondent said:

“As a non-departmental public body, [we use] the Model Code when developing codes of conduct for both Board members and employees. [Our] policies are developed in line with the Model Code.”

Others mentioned that they use – or have used – the Model Code in their role as a standards officer. In addition, a few respondents described the other roles in which they have used the Model Code – for example, as a monitoring officer, as a legal

⁴ Note that throughout this report, respondents are classed as providing comments or feedback unless they answer 'no comment' (or similar) and do not provide any follow-up remarks, or if they leave the relevant field blank.

adviser to a public body board, or when investigating complaints about public body board members.

Need to review and update the current Model Code

Question 3: Do you agree that there is a need to review and update the current Model Code? Could you provide information to support your response?

Forty-four respondents (98%) provided their views on whether there is a need to review and update the current Model Code, while one respondent (2%) did not. Of the 44 respondents who provided their views, the vast majority (41 respondents, or 93%) agreed that there is a need to review and update the Model Code. When asked to provide more information to support their response, these respondents most often expressed the view that society and practice is changing and that the Model Code must be updated to ensure its continued relevance and/or to incorporate lessons learned through recent experience, with some also highlighting that some time has passed since 2014, when the Model Code was previously reviewed. Comments from these respondents included:

“[The] Code [was] last amended in 2014 so a review would seem appropriate given the number of changes in recent years - particularly with recent changes accelerated by the need to work differently due to the pandemic.”

“It is appropriate to revisit the Code from time to time, to seek improved clarity and to update in light of experience and changing external drivers and expectations.”

“As it stands the Model Code does not reflect our ever increasingly diverse society around gender, race and ethnicity, disability, religion, sexuality, class and age. We recommend the Model Code needs to be drafted in such a way that it is able to respond in an inclusive way, appropriately and sensitively to this diversity. To be fit for purpose it needs to go further, setting standards on equalities to fundamentally ensure the highest standards of conduct are in place and maintained.”

Several respondents noted the increased role played by social media and online technology in society and felt that this justified the need to review the Model Code. A similar proportion recognised that the Model Code required updating to address issues relating to bullying and harassment and/or to strengthen key areas such as respect and courtesy, to ensure that current expectations around behaviour are adequately reflected in the Model Code. As we heard from one respondent:

“It is appropriate to make the Model Code easier to understand and to take account of developments in our society, such as the role of social media. It is also appropriate to strengthen the Model Code to reinforce the importance of behaving in a respectful manner and to

make it clear that bullying and harassment is completely unacceptable and should not be tolerated. This refresh provides the opportunity to produce a Model Code that is fit for purpose and to ensure the highest standards of conduct are maintained.”

Others felt that the Model Code required reviewing in order to provide greater clarity. While some were of the view that more clarity was required in general, others highlighted specific parts of the Model Code that would benefit most from greater clarity. For example, respondents felt that clarity was needed in relation to:

- when board members can reasonably be considered as representing their public body;
- when a conflict of interest requires a declaration;
- when conflicts of interest should remove board members from discussions.

Another relatively common theme among respondents was the need for the Model Code to be made more accessible and easy to understand. Respondents saw this as being important for both board members and members of the public. For board members, respondents said that a more simple and accessible Model Code would help to encourage compliance with the Model Code itself. Members of the public – who were viewed as being unfamiliar with the language and ethos of the public sector – were also seen as beneficiaries of a simpler and more user-friendly Model Code.

Out of 44 respondents to this question, three (7%) disagreed that there is a need to review and update the Model Code, all three of whom engaged with the consultation as individuals. When asked to provide further information, two of these respondents said that the Model Code did not need to be updated because the current Model Code works well. For example, as one respondent said:

“From my point of view the current Model Code works well and gives sufficient explanation and understanding of the rules for all to follow. We are all well aware of the Nolan principles and how they have been developed in the UK and in Scotland; from my personal experience the Code appears to work well.”⁵

⁵ The Nolan Principles are seven key principles of conduct designed to underpin public life. They were created in 1995 by the Committee on Standards in Public Life and comprise the following: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. The Committee recommended that public bodies should create codes of conduct reflecting these principles. For more information, see the [Scottish Government website](#).

Section 1: Introduction to the Model Code

Question 4: In Section 1, and throughout the Model Code, we have removed unnecessary information to make it easier to understand. Do you have any comments on the changes proposed for Section 1: Introduction to the Model Code?

Twenty-nine respondents out of 45 (64%) provided comments on the changes proposed for Section 1 of the Model Code, while 16 (36%) did not. Among those who commented, the feedback received was generally positive, with many respondents highlighting that the revised Section 1 was easier to understand and more user-friendly than the equivalent section in the current Model Code. In particular, respondents liked that the revised section was shorter and this was felt to make it easier to follow. They also commented on the removal of unnecessary information and “wordy” paragraphs, the use of plain English and the improved layout and format of Section 1, which made it easier to find the relevant information. These changes were felt to have brought greater clarity to this particular section of the Model Code.

A few respondents commented positively on the use of the ‘first person’ narrative in Section 1 and felt that this helped to underline the responsibility placed on individual board members. As one respondent said, “The use of the ‘first person’ throughout makes it clear it is the individual’s responsibility to understand and comply with the code.”

At the same time, however, a few respondents did not like the use of the first person. These respondents said that they were unconvinced that the use of the first person was the best way to encourage board members to take ownership of their behaviour, or felt that the use of the first person could be seen as patronising, unhelpful or unnatural.

Several other respondents also provided their views on other changes and/or additions that could be made to the Model Code, or on things they did not like about the revised Model Code. A few highlighted issues with Paragraph 1.5 in particular. It was felt that not enough clarity was provided around *when* individuals could be reasonably perceived to be acting as a board member, and that the circumstances in which the Model Code would apply are therefore too wide. One respondent said that this created ambiguities about when a breach of the Model Code could be perceived to have taken place. On Paragraph 1.5, they commented:

“I presume that this was included to reflect the current situation inasmuch as a breach of the Code only occurs when an individual is, or could reasonably be construed as, acting in the capacity of a board member. However, as written, it places the obligation on members to comply with the Code in that capacity but does not remove the obligation to comply when they are not acting in that capacity. As a consequence of this drafting, to use a simple

example, paragraph 1.4 (see above) would apply to an individual regardless of whether they were or could be construed to be acting in the capacity of a board member. This same issue applies to the rest of the content in section 1.”

A couple of respondents also highlighted issues with Paragraph 1.10 in relation to training and development. These respondents felt that the current wording creates an obligation to undertake any available training regardless of the need for, relevance of or cost of that training. As such, they suggested the removal of the word ‘any’, prefacing the section with ‘relevant and necessary’, or making it clearer that any training or professional development for board members should be at the discretion of the relevant Chair. The research team acknowledges that it may be relevant for these issues to be considered by the Standards Commission in their guidance supporting the Model Code.

Some examples of other suggested changes to Section 1 included:

- including a brief introductory paragraph at the beginning of Section 1, explaining the purpose and use of the Model Code – the research team acknowledges that it may be more appropriate to include this in the Standards Commission’s guidance and not in the Model Code itself;
- including a reference to politicians in Paragraph 1.6;
- placing greater emphasis on equality and diversity, for example by including the need to undertake training in relation to the Equality Act 2010 and including accessible references to supporting guidance on the Act;
- providing a definition of the ‘objective test’⁶ and making it clear that this test applies wherever the Model Code makes use of the term ‘perception’ – again, the research team suggests that this could be reflected on in the Standards Commission’s guidance accompanying the Model Code.

⁶ According to the [current guidance](#) on the Model Code, the ‘objective test’ is a test of “whether an ordinary member of the public with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your decision making”.

Section 2: Responsibilities

Question 5: In Section 2, the Model Code has a new heading “My Responsibilities” which aims to ensure that members accept and endorse that it is their personal responsibility to be aware and comply with the provisions in their Board’s Code of Conduct. Do you have any comments on this change in Section 2: Key Principles?

Twenty-eight respondents (62%) provided views on Section 2 of the revised Model Code, while the remaining 17 respondents (38%) did not provide any comments. Before the responses from those who provided views are analysed in full, it is worth noting that, as many respondents highlighted, the ‘My Responsibilities’ sub-section appears in Section 1 of the revised Model Code (and not Section 2 as suggested in the consultation question). As such, it is worth clarifying whether this is an error in the formatting of the revised Model Code or in the consultation question. This also meant that the responses to Question 5 included comments relating to both Sections 1 and 2 of the revised Model Code; for the purposes of the analysis, these were analysed – and are presented here – together.

Many respondents expressed positive views on the changes made to Section 2 and on the changes relating to the ‘My Responsibilities’ sub-section of Section 1. In particular, respondents liked the use of the first person and there was a sense that the first person narrative emphasised the personal responsibility of board members to comply with the Model Code and also to commit to the principles outlined in Section 2. A couple of respondents felt that this was an advantage over adopting a third person narrative, which was felt to imply corporate responsibility or collective accountability. For example, as one respondent said:

“[We] prefer the use of the first person in the proposed Model Code as there is a sense of personal ownership of the provisions of the code, rather than the third person which implies corporate responsibility. The drafting firmly puts the responsibility for compliance onto the Board Member and this is welcomed.”

Some respondents also felt that the revised Model Code was clear – be it in how the Model Code sets out the key responsibilities and obligations for board members, or in how it underlines the importance of personal responsibility.

Several respondents felt that there were things that could be changed about – or added to – the revised Model Code, or highlighted aspects of the Model Code that they did not agree with. Again, a couple did not like the use of the first person narrative – for example, one respondent felt that “the Model Code would read better if it was written as a ‘second-person’ point of view, as it is there to primarily stipulate a collection of rules and regulations to abide by”. Other points of feedback from respondents included that:

- Paragraph 1.6 should be amended to reflect on virtual and remote interactions with others, in light of the ongoing COVID-19 pandemic;

- 'selflessness' should be added in to the list of key principles in Section 2;
- a principle on 'promoting equality and diversity' is required in Section 2;
- greater clarity is required on whether an alleged breach of the key principles in Section 2 constitutes evidence of a breach of the Model Code more widely.

Section 3: General conduct

Question 6: In Section 3, General Conduct, the respect provision has been extended to everyone that a member could come into contact or engage with when acting as such, e.g. employees of other public bodies as well as other board members and the general public. We have also included information relating to the use of social media and highlighted that bullying and harassment is totally unacceptable.

This section also covers Gifts and Hospitality. These provisions have been amended to make it clear that they should not be sought or accepted with the exception of minor gifts or hospitality that a member would normally be expected to be offered in their everyday role.

Do you have any comments on the proposed changes in Section 3?

Thirty-eight respondents (84%) provided feedback on the changes made to Section 3 in the revised Model Code, with the remaining seven respondents (16%) not providing any feedback. Several respondents commented positively on the additions made in relation to respect and courtesy and/or bullying and harassment. Among these respondents, there was a sense that the revised Model Code was an improvement on the current Model Code as it demonstrates a strong commitment to respect and courtesy while clearly setting out the expectations around the behaviour of board members. For example, as one respondent said:

“We support fully the expansion of this section and the greater emphasis given to the expectation that board members will conduct themselves respectfully to all parties and a zero tolerance approach to bullying, harassment and unlawful discrimination in all its forms. This is consistent with the aim of achieving greater diversity on public sector boards which was a principal theme of the Ethical Standards Commissioner's consultation on public appointments last autumn.”

Within the context of respect and courtesy, a few participants also explicitly welcomed the content in Paragraph 3.1 relating to the use of social media. For example, one participant felt that it was “obviously necessary” to update Section 3 to take greater cognisance of social media.

Others commented on the improved clarity of Section 3 – be it as a whole, in relation to particular sub-sections or in relation to specific paragraphs. Some examples of areas where the revised Model Code was felt to be particularly clear included:

- the definition of bullying and harassment, which respondents – and the Model Code – recognised could be physical, verbal and non-verbal in nature;

- the rules and obligations in relation to gifts and hospitality – an area which one respondent said was now “clearer and easier to understand”;
- the expected relationship between board members and employees, and the differentiation between strategic governance and operational management.

Many respondents provided views on aspects of Section 3 that could be added to or changed, or that they did not like. In particular, Paragraph 3.6 – which stresses that board members will not become involved in operational management unless it is written into their role, and that it should be left to the Chief Executive and Executive Team – was met with a degree of controversy. Some respondents objected to the current wording of Paragraph 3.6 and felt that it implies that the board has no responsibility for operational management at all, while others stressed that provision should be made for board members with non-executive roles to be able to take part in operational management at the request of the Chief Executive. Others felt that more guidance or clarity around operational management was required, indicating that:

- clarity is needed on what is meant by ‘operational management’;
- more detail is required around Paragraph 3.6 and it should be supported by some form of relevant guidance;
- the Model Code could be strengthened by giving an example of when it would be appropriate for a non-executive Director to become involved in operational management;
- the Model Code should make reference to the information on operational management contained in the On Board guidance.

Again, a few respondents also felt that more clarity should be provided about when board members can be perceived to be acting as a board member or as representing their public body and, therefore, on when they are required to conduct themselves in line with the provisions of the Model Code. For example, as one respondent said:

“The Code must be much more explicit in supporting judgement on for example when social media actions may be perceived as related to my role on a public body. The Code as drafted does not appear to have evolved sufficiently to adapt to supporting good governance in a digital world.”

A few also voiced concerns about the contents of Paragraph 3.10, which requires board members to respect the principle of collective decision-making and corporate responsibility. For example, one respondent felt that collective decision-making could limit the ambition of Integration Joint Boards in particular, as it ran the risk of “potentially difficult but required changes” not being approved if a collective agreement was required. Another called for Paragraph 3.10 to be removed, stating that there are situations where board members should have the right to seek to change a decision – for example, if the board makes a decision against the advice

of its professional advisers. The research team suggests that the Standards Commission's guidance may be an appropriate place to provide further clarity on the issues around collective decision-making.

A couple of respondents also felt that the paragraphs relating to confidentiality (3.22-3.24) suggested that whistleblowing would represent a breach of the Model Code – one respondent called for more clarity on this.

Other comments from respondents on this section included:

- in Paragraph 3.7, the restriction on the criticism of officers is worded too restrictively and does not allow for constructive criticism;
- also in Paragraph 3.7, the word 'public' is open to interpretation, particularly where comments are made on social media and not to a more restricted audience;
- in Paragraph 3.8, the adjectives 'unfair' and 'undue' are unnecessary;
- while the revised section on gifts and hospitality (in Paragraphs 3.12 to 3.20) is helpful, this set of provisions appears denser and is less clear than other parts of the revised Model Code;
- in Paragraphs 3.25 to 3.27, the provisions about dealings with – and responsibilities to – individual public bodies are helpful, but another paragraph should be added requiring board members to disclose connections in informal dealings with officers;
- Paragraph 3.29 is too restrictive in confining the duty to identify and resolve conflicts of interest to companies or charitable trusts – it was felt that this duty should apply to conflicts of interest with any outside body to which the board member is appointed, regardless of that body's legal status;
- Paragraphs 3.12 and 3.19 should explicitly relate to issues regarding board membership only.

Section 4: Registration of interests

Question 7: Section 4 has been amended to reflect the changes made throughout the Model Code and to make clearer what kind of information needs to be registered. Do you have any comments on the changes proposed for Section 4: Registration of Interests?

Twenty-eight respondents (62%) commented on the changes made to Section 4 of the revised Model Code. Seventeen respondents (38%) did not comment. Among those who provided feedback, several respondents were of the view that the revised Section 4 provides greater clarity about what kind of information needs to be registered, with one respondent commenting that this added clarity resulted from the greater level of detail now provided. Other respondents said that the changes made to Section 4 were helpful, that they supported the changes, and that the changes were “all good”.

As with other sections of the Model Code, several respondents provided views on things that should be amended in Section 4. A few respondents commented on Paragraph 4.20, which states that there is no longer the need to register any gifts or hospitality received. They felt that there *should* be a register for gifts and hospitality of some kind and that this should even cover offers of gifts and hospitality that were declined. Comments from respondents included:

“We feel that it is still appropriate in terms of transparency and accountability to publish a register of any offer of gifts or hospitality that have been refused or accepted.”

“Should offers above low values not be registered? There needs to be a transparency around this, even if an offer has been declined. Should organisations be encouraged to keep a list of hospitality accepted on behalf of the organisation?”

Another respondent felt that Paragraph 4.20 appeared to contradict the wording in Paragraph 3.18 (which states that board members will accept gifts and ask for these to be registered, if not accepting a gift could potentially cause offence) and potentially also Paragraph 3.20 (which states that board members should advise their standards officer if they are offered any gifts or hospitality of any significant value, or if they are offered gifts or hospitality from the same source multiple times). We also heard that Paragraph 4.20 should refer back to Paragraph 3.20 for added emphasis.

We also heard from a respondent who felt that there should be a single national code with one register of acceptance and of interests. This respondent said that they sit on multiple boards and so they have to register the same interests several times. They felt that this is an inefficient process which could lead to errors. They also mentioned occasionally having to print, sign and return declarations and suggested a move to electronic copies with electronic signatures or confirmations.

Some respondents felt that Section 4 would benefit from additional clarification in particular areas, for example:

- Paragraph 4.3 should be amended to make it clear that it is not necessary to register the interests of anyone else (such as family members), not just spouses and cohabitees;
- what is meant by 'remuneration received by a board member' (in Paragraph 4.5) and whether this covers remuneration received as a member of any board, or of the board in question;
- what is meant by 'regularity' (in Paragraph 4.10);
- what is meant by 'other roles' (in Paragraph 4.13) – we suggest that this is clarified in the Standards Commission's guidance;
- whether the address of a property needs to be made publicly available, as is the case in the Councillors' Code (Paragraphs 4.17 to 4.18).

Section 5: Declaration of interests

Question 8: Do you have any comments on the changes proposed for Section 5: Declaration of Interests? The changes have been made to make it clearer that members need to take responsibility for declaring matters of interest.

Twenty-eight respondents (62%) provided comments on the changes proposed in Section 5 of the revised Model Code, while 17 (38%) did not. Many respondents felt that this section of the Model Code was clear, simple and easy to understand, particularly when compared to the current Model Code. In particular, respondents welcomed the greater clarity around when a declaration of interest should be made and also in relation to the use of the objective test. A couple of respondents said that the changes made in Section 5 underlined personal responsibility in declaring matters of interest and made this responsibility clearer.

Several respondents also felt that the changes made in Section 5 of the Model Code were helpful, practical and easy to apply. For example, a couple of respondents said that they found the ‘three stage process’ helpful in declaring an interest, namely: identifying a connection; declaring that connection as an interest where the objective test has been met; and withdrawing from board meetings.

Some examples of the positive feedback from participants included:

“The new approach and the new wording are huge improvements on the existing rules – shorter, simpler, clearer language, easier to apply to circumstances.”

“The detail on the objective test is set out clearer and is easier to follow and apply.”

“The clarity in this section is welcomed, particularly clarity on where there is an interest, a Board member should not remain in the discussion nor decision making.”

On the other hand, several respondents felt that there were aspects of Section 5 that should be amended or made clearer, or that could cause issue for board members. In particular, some expressed concerns in relation to Paragraph 5.5, which stipulates that board members will not remain – or participate – in any parts of board meetings where they have declared an interest. Some of these participants felt that the removal of board members from meetings where an interest has been declared would be detrimental to the meeting taking place, as board members with potentially important knowledge and experience would no longer be present. Others said that members should only be required to leave the meeting after making a declaration of interest, should that interest represent a clear conflict with the matter being discussed. Other points raised in relation to Paragraph 5.5 included that:

- the introduction of the qualification 'significant' in Paragraph 5.5 would likely lead to some board members being discouraged from declaring small interests;
- the Model Code should be clearer what 'leaving the room' would mean for online meetings – for example, specifying whether this means disconnecting from the meeting altogether or simply turning off their camera and microphone.

Some examples of other less common points raised by respondents in relation to Section 5 included:

- on Paragraph 5.7 (which states that dispensations can be granted to take part in discussions on matters where board members would otherwise have to declare an interest and withdraw from the meeting), whether dispensation will be applied to members of Integration Joint Boards;
- more clarity is required around the definition of 'family' for the purposes of declaring an interest;
- Section 5 is expressed in overly-technical language – this respondent felt that a plain English explanation of the steps that must be taken in declaring an interest would enable this section to be more easily-understood;
- that more context would be helpful to stress the importance of making a declaration;
- that guidance could be provided on what might constitute a declarable interest.

Section 6: Lobbying and access

Question 9: Public bodies aim to be open and accessible to the views and opinions of others, and to make their decisions based on the widest possible evidence and arguments. As a Member you will probably be approached by those wishing to make their views known. This is perfectly legitimate but care is needed. We have looked to simplify the Model Code in Section 6 covering Lobbying and Access. Do you think the proposed changes achieve this aim?

Thirty respondents (67%) provided feedback on Section 6 of the revised Model Code, with the remaining 15 respondents (33%) not providing any feedback. Many respondents said that they found this section to be clear, well-explained and simple to follow. Some also felt that the revised Section 6 was both helpful and practical. For example, respondents liked the inclusion of information on how lobbying might occur, the different types of lobbying that may take place, the application of the objective test, and who to approach for further guidance relating to lobbying and access. Comments from respondents included:

“I think Section 6 is better explained and set out in the revised Model Code (albeit preferably without 'I!'). The explanation, in particular, of how lobbying might occur is helpful. A good new section is proposed.”

“This reads much clearer in our view – it is helpful that the new text includes a definition of lobbying and also that it refers to the application of the objective test when considering lobbying which the current Code does not do.”

“While these are not issues smaller organisations are likely to encounter regularly the new wording is very clear.”

As with other sections of the revised Model Code, several respondents felt that there were a few amendments that could be made to the Model Code, but again views in this area were diverse. For example, a couple of respondents emphasised the role of the board Chair in this regard; we heard that if a board member is approached by a lobbyist, in order to safeguard the decision-making process then this should be drawn to the attention of – or even recorded and processed by – the Chair or, alternatively, by the Chief Executive or Standards Officer. Other points of feedback included that:

- the Lobbying (Scotland) Act 2016 does not apply to Integration Joint Boards and so the provision in Paragraph 6.6⁷ should either be removed altogether,

⁷ Paragraph 6.6 reads ‘Before taking any action as a result of being lobbied, I will seek to satisfy myself about the identity of the person or organisation that is lobbying and the motive for lobbying. I understand I may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that I

or it should be made clearer that Integration Joint Boards are free to disregard this provision;

- the use of the word 'reasonable' (presumably in Paragraph 6.2) is problematic in that sometimes, there is a difference between the perception of an issue and the reality of it;
- a clearer distinction needs to be drawn between lobbying on one hand, and information gathering and normal engagement for legitimate purposes on the other hand;
- whether the instruction to seek further guidance, if needed, from the Chair, Chief Executive or Standards Officer places limits on the amount of guidance available to the board member.

understand the basis on which I am being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code and the Lobbying (Scotland) Act 2016.'

Annex A of the Model Code

Question 10: The information in Annex A has been extended to include information about the role of the Ethical Standards Commissioner and the sanctions available to the Standards Commission following a finding of a breach of the Model Code and what these mean. Do you have any comments on the changes proposed to Annex A?

Most respondents (30, or 67%) did not provide any feedback on the changes proposed to Annex A in the revised Model Code. This may indicate that the majority of respondents were content with the changes proposed to this section. However, a degree of caution is required here as it may also be the case that respondents did not provide feedback for other reasons.

Among the 15 respondents (33%) who did provide comments on this section, some expressed the view that the revised Annex A is clear and well-explained. For example, one respondent said that Annex A was clear in outlining the responsibilities of both the Standards Commission and the Commissioner, and in detailing the process of investigation and the potential consequences of any breaches of the Model Code. Another commented as follows:

“I think that the proposed Annex A sets out the situation and changes well and in clear language (and not an 'I' in sight!). Much better.”

Other respondents said that they found Annex A to be helpful. In particular, a couple of respondents said that it was helpful to have information on the respective functions of – and relationships between – the Standards Commission and the Commissioner.

Several respondents identified changes that could be made to the Model Code, although again there was no clear consensus in terms of the issues raised. Some examples of changes that could be made, as suggested by respondents, included:

- the Model Code should stipulate that during the investigation of a complaint, it may be appropriate to suspend board members to enable a fair investigation to take place;
- the Model Code should include reference to the Standards Officer in respect to any investigatory role that they may be required to fulfil;
- it may be useful to explain how the Commissioner and the Standards Commission may test conduct against the principles outlined in Section 2, when considering any potential breaches of the Model Code – the research team suggest that this be explained in the Standards Commission’s guidance to the Model Code;

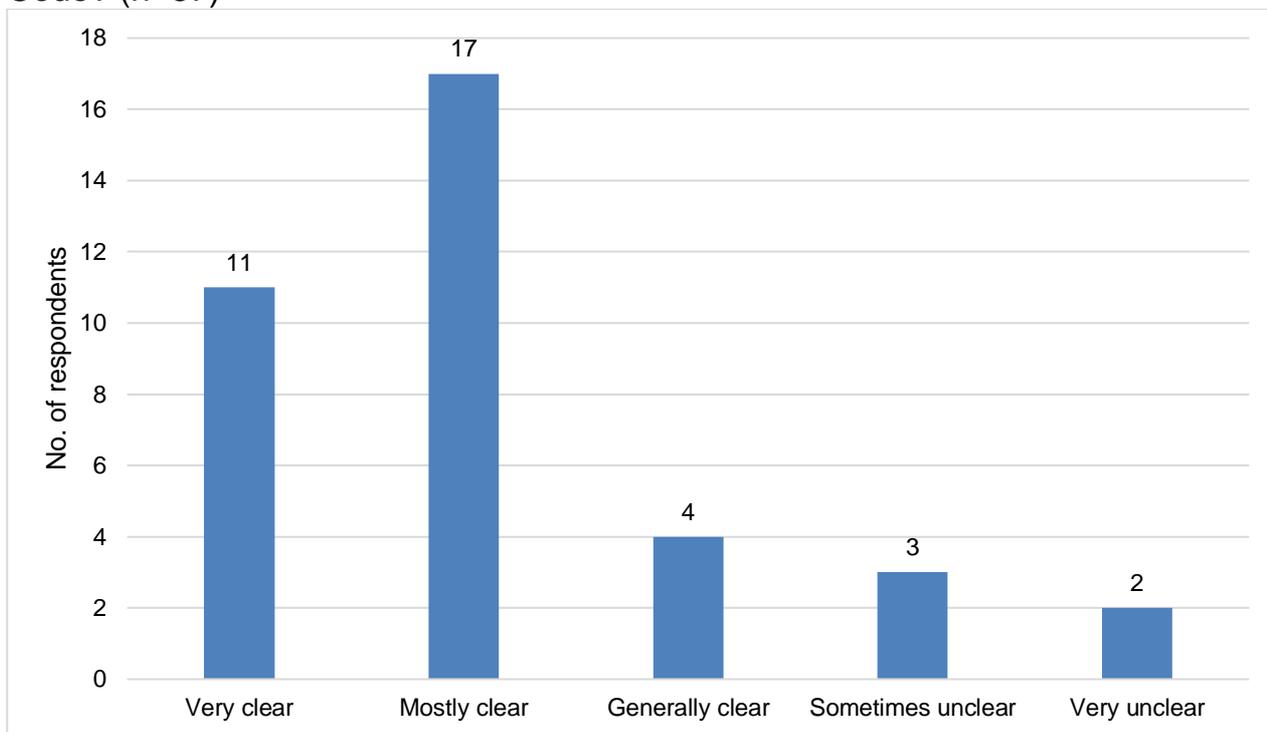
- text should be included to note expectations to meet the provisions of the Equality Act, which was viewed as being key in enforcing high standards in public life;
- consideration should be made of whether a more graded approach to handling breaches of the Model Code is required, where there is potential for resolution at a local level before the issue is escalated further.

Clarity and ease of understanding of the Model Code

Question 11: Overall, how clear and easy to understand do you find the revised Model Code? Please tell us where you think the clarity of the Model Code could be improved, and how?

Thirty-nine respondents out of 45 (87%) provided comments and/or a rating on how clear and easy to understand the revised Model Code is, while six respondents (13%) did not. As shown in Figure 1 below, out of the 37 respondents who provided a clear rating, almost half (17, or 46%) rated the revised Model Code as ‘mostly clear’.

Figure 1: Overall, how clear and easy to understand do you find the revised Model Code? (n=37)



Comments from respondents who felt that the revised Model Code is very, mostly or generally clear included:

“Overall clear and welcome making the Model Code more accessible and easier to understand.”

“Overall it is felt the revised approach does make it clearer to the member their responsibilities and easier to digest/make reference to. The removal of unnecessary text is also helpful as it focuses on the important points.”

“The revised Code is clearer, shorter, more concise and easier to read and comprehend.”

Some respondents commented on ways in which the Model Code could be made clearer. Considering the revised Model Code as a whole, a couple of respondents felt that the content and language used in the Model Code is not inclusive or accessible – one respondent suggested that an Easy Read version of the Model Code should be provided to help people with learning disabilities.

A few commented on the need for more clarity in Section 3 – for example, in Paragraphs 3.9 (on respecting and complying with rulings from the Chair) and 3.10 (on the principle of collective decision-making). Others highlighted that there was room for greater clarification in Section 4 and Annex B.

Final comments on the Model Code

Question 12: Do you have any other comments on the proposed revisions to the Model Code?

Seventeen respondents (38%) provided final comments on the revisions to the Model Code, while 28 (62%) did not. A few respondents ended by re-emphasising that they felt the revised Model Code is clear, simple and easy to follow. For example, we heard that:

“The existing Model Code has been clarified and is easier to understand. The main concepts and principles of the Model Code remain unchanged, with an emphasis on good practice and they should not be a burden for compliance.... The proposed changes are welcomed.”

Other examples of positive, final reflections from respondents included that the use of the first person underlines the importance of individual responsibility in understanding and complying with the Model Code, and that the inclusion of content relating to social media is an important addition.

Several respondents ended the consultation by expressing their views on areas where the Model Code could be strengthened. However, there was no clear consensus and a range of views were expressed, many of which have been highlighted previously in this report. For example, respondents felt that the Model Code:

- could do more to encourage greater diversity in public appointments – it was felt that the Model Code “is still some way from acting as a roadmap” for fostering greater equality, diversity and inclusion;
- should maintain the current practice of recording gifts and hospitality;
- should provide greater clarity on when an individual is perceived to be acting as a board member;
- should better-emphasise the need for continued professional development for board members;
- must take cognisance of the different legal and constitutional and membership arrangements relating to Integration Joint Boards;
- should distinguish clearly between mandatory and optional provisions, enabling Integration Joint Boards to opt out of any provisions which may be irrelevant and/or inappropriate for them – for example, the provisions in Paragraphs 1.9 and 1.10.

One respondent provided practical guidance for those involved in revising the Model Code, stating that:

“[We should] be very careful if making changes [to the Code] which make roles unworkable in practice when working with stakeholders. So much really good useful information and experience should be shared carefully to improve all the work that public sector bodies do.”

Conclusion

The information provided in the consultation responses was generally of a good standard, detailed and balanced. This likely reflects the fact that most respondents were already users of the current Model Code – for example, as board members of public bodies – and were therefore well-placed to comment on the changes made in the revised Model Code. Among the respondents, there was a clear need to review the Model Code and a general sense that society and practice have changed since the Model Code was last updated in 2014.

Overall, the responses to the consultation indicate a good level of support for the changes proposed in the revised Model Code. Across all sections of the revised Model Code – from Section 1 to Annex A – there was a strong sense that the revised Model Code is clear, simple and easy to understand and particularly so when compared to the current Model Code. Moreover, many also felt that the changes made to the Model Code had helped to make it more helpful, practical and easy to apply to respondents' everyday roles.

In particular, respondents felt that the revised Model Code demonstrates a strong commitment to principles of respect and courtesy while adopting a clear stance against bullying and harassment. Respondents also welcomed the strengthening of provisions in the Model Code relating to the use of social media. Another strength of the Model Code – as perceived by many respondents – was the increased use of a first person narrative, which was seen as being key in underlining a board member's personal responsibility to carry out their duties with regard to the Model Code.

However, the use of the first person narrative was not without its criticisms, with some respondents expressing the view that such a narrative is unhelpful. Indeed, the consultation analysis unveiled a range of areas in which respondents felt the revised Model Code could be strengthened and/or changed, or where more clarity could be provided. Despite there being strong indications that the revised Model Code is clear and easy to understand, there was also a sense throughout the consultation responses that further clarity is required with regard to a range of issues. Particular aspects that respondents felt needed to be considered further included:

- providing greater clarity on when an individual can reasonably be perceived to be acting as a board member and, as such, on when the provisions of the Model Code applied;
- the provisions outlined in Paragraph 3.6 with regard to a board member's role (or lack of it) with regard to operational management;
- Paragraph 3.10 around the principle of collective decision-making;
- Paragraph 5.5 in relation to members being removed from board meetings where they have declared an interest.

While there were a few areas of commonality, such as the above, respondents also raised a variety of more minor points of feedback. Examples of these included, but were by no means limited to: whistleblowing; when a conflict of interest requires a declaration; and in relation to respecting and complying with rulings from the Chair. Such divergence in the overall responses likely reflects the range of individuals and organisations who responded to the consultation and who use the Model Code in a variety of roles.

Next steps

We will carefully consider all of the suggestions provided from the responses received as we update the Model Code. Thereafter, we will take the actions required to ensure the Model Code is laid before the Scottish Parliament for scrutiny and approval at the earliest possible date.

Once the Model Code has been approved by the Scottish Parliament, we will arrange for its publication on the Scottish Government website and will take the required administrative actions to ensure each individual organisation that is required to produce a Code of Conduct based on the Model Code does so within an agreed timescale. The Standards Commission will also publish new guidance to help board members of public bodies to interpret the provisions within the Model Code of Conduct.



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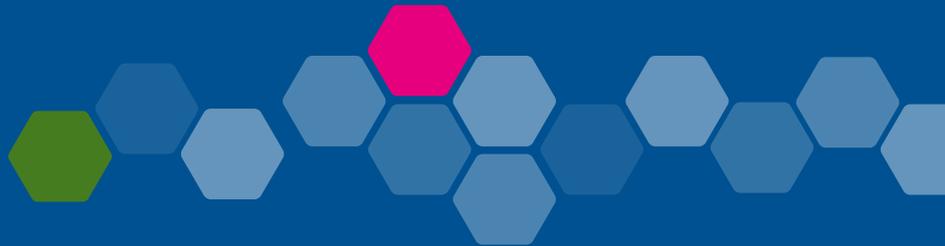
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