

# The Standards of Conduct Committee review Response to Welsh Parliament Consultation on Code of Conduct and Associated Procedures

The Good Governance Institute (GGI) is an independent organisation working to improve governance, both through direct work with individual boards and governing bodies, and by promoting better practice through broader, national programmes and studies. We run board development programmes, undertake governance reviews and support organisations to develop towards necessary authorisations. We have an office in Cardiff led by the chair of our Advisory Board, Dr John Bullivant. (john.bullivant@good-governance.org.uk)

We welcome the consultation on a revised set of standards for public life and support the inclusion in 2018 of the Respect standard (similar to that adopted by the then Scottish Executive in 2000). GGI carried out its own review in 2020 and submitted this for inclusion in 'The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs: Chapter on Nolan Principles by Smith, C., Corbett-Nolan, A.'

We note that the chairman of the Committee on Standards in Public Life, Lord Jonathan Evans, marked the 25th anniversary of the Nolan Principles in 2019 with a thoughtful article, in which he wrote:

"While organisations from local councils to NHS trusts and schools have published codes of conduct, the Committee's reports in recent years have frequently identified weaknesses in scrutiny and insufficient education in organisations about the expected standards of behaviour. Good conduct is just as much about organisational culture as it is about formal rules and structures. Building and maintaining a strong ethical culture requires constant vigilance." (Evans, 2019)

Research has demonstrated that self-regulation is typically ineffective without an element of external scrutiny (Committee on Standards in Public Life, 2013). However, as an advisory non-departmental public body, the Committee on Standards in Public Life does not have powers to enforce the application of the Nolan Principles in public sector organisations. It is instead for regulatory and other public bodies themselves to ensure that the principles are adhered to.

We have sought to answer the specific questions below but would like to make some additional points:

## 1. Trickle down

It is inevitable that a revised code for the Welsh Parliament will come to apply to all public bodies in Wales and possibly those who supply or contract to deliver on behalf of such bodies. We have made our responses assuming this to be the case so that the code will not need significant additional drafting when more widely applied.

## 2. Public service values

In 2000 Scotland also added a standard on public service values. This may be under consideration in Wales but we would caution that an overriding commitment to the fiduciary duty of an entity can be complex, as what may be in the best interests of an organisation may not be in the best interests of the public. For example, the desire to protect services at all hospitals in order to maintain their survival may compromise outcomes and cost effectiveness when volumes of treatment are too low for safe operations and the scale of the entity may make recruitment difficult or impossible.

## 3. Place

We detect a move from organisational boundaries to place-based services that echo the concept of anchor organisations, using the Welsh public pound for job and supply opportunities and Circular Economy Innovations Communities (CEIC) to learn and share innovations. These require a re-evaluation of standing orders, audit opinion and the standard on merit. Merit must be interpreted more broadly than simply lowest cost; for example when the purchase of goods and services locally may cost more but the added value from employment adds to the health and wellbeing of the community.

## 4. Legitimacy

Public bodies will all need to take complex and often unpopular decisions reflecting capacity, financial resources and public safety. To be able to do this the entity must have secured legitimacy for its decisions and scope of action (both over time and geography). Professor King of South Africa in his King Reports has described four outcomes of good governance (ethical culture, good performance, effective control... and legitimacy).

Ref: <https://www.good-governance.org.uk/services/king-iv-for-health-and-social-care/>

## 5. Collaboration to deliver

All Welsh public organisations have some degree of commitment to partnership working and collaboration but this should be reinforced to become a commitment to collaborate to deliver. For example, there should be no excuse of delayed discharge to care because of squabbling over who pays and there should be safe and effective transport access to hospitals, education, work and shops as well as places of worship, leisure centres, parks, the sea and the countryside.

## 6. Best value

Wales has consistently argued in favour of removing commercialism from public services such as the NHS and has been consistent, for example, in resisting foundation trusts, commissioning and inauthentic choice but it needs a better interpretation for what used to be called best value. The mantra should read as follows:

- Do we need the service?
- If yes, are we good at providing?
- If not, have we the appetite to improve?
- If not, who else can we get to do it?

(ref: Benchmarking for best value, FT 1999)

## 7. Leadership

'Members must promote and support these principles by leadership and example, and be willing to challenge poor behaviour wherever it occurs.'

This definition of leadership is problematic. We have found in our studies of boards that challenging is difficult without strong self-belief and positive reinforcement. Leadership can also be about reinforcing others' views and concerns as well as taking that lead yourself. There should also be a commitment to diversity and protecting vulnerable groups from harm and undue criminalisation.

## 8. Times are a-changing

The code was drawn up in the 1990s and reflected a different technological and cultural world. The current changes are necessary, as the code needs to evolve, but they are limited in relation to social media and populism, especially when strong characters in positions of authority wield these. In addition, the coronavirus pandemic has proved the value of distance-based meetings (teams/Zoom etc.) but these too require a new etiquette with opportunities for rest and side communications. Knowledge is power and organisations, public and private, now have access to large amounts of personal, financial and medical data as well as social habits and contacts. The section on not misusing financial resources now needs to be extended to these other forms of information, which could be used detrimentally against individual or groups.

### Responses to questions set

Question 1: We would welcome your views on our approach to the code's structure, as:

- a set of overarching principles that describe how members should behave; and
- a set of clear rules against which members can be held to account.

GGI believe it is far better to set principles that require members to think about their obligations and act accordingly. However, the code must be enforced and needs to be included in the work of the appropriate regulators. We have noticed too often, for example, that recording conflicts of interest is seen as an end in itself whereas in fact they need action to consider if the conflict is a breach of the code. The COI register should be audited annually, not just for complete disclosure but to see if the disclosure has been tested against the code and actions have been taken to remove the conflict.

Question 2: The committee would welcome views on the application of the code to members' private lives. Where should the balance be struck between members' rights to private and family life and the public interest in maintaining high standards of conduct?

Again, for example, conflict which would arise from members' interests cannot be absolved by simply transferring conflicting assets, benefits or roles to relatives. While family have a right to privacy, public office carries with it the responsibility to do the right thing rather than seek to avoid criticism. The problems of conflict of interest (COI) were well illustrated by involving GPs in resourcing decisions following the Lansley NHS reforms in England.

Question 3: We would welcome your views on the approach we have taken in tailoring the wording associated with the seven Nolan principles, with the aim of making them applicable and relevant to the roles of members of the Senedd. Would you suggest any further changes to this wording?

As above, we believe the new code will trickle down to all public organisations over time and the wording could be drafted now to reflect this. In many cases members will hold additional accountable roles and should not be subject to different or lesser codes for their various roles.

Question 4: We would welcome your views on our proposed additional principle of respect and accompanying rules. Do you think it is sufficiently clear in its expectations on how members will behave?

No comment

Question 5: We would welcome your views on the rules set out in the updated code:

- are they sufficiently clear in setting out how members must behave?
- are there any rules or aspects of the rules in the updated code that you believe members should not be required to comply with?
- are there any additional rules that you believe members should be required to comply with?

There should be a commitment to place, to the promotion of using the Welsh public pound for job and supply opportunities. They should also diversity and protect vulnerable groups from harm and undue criminalisation.

Question 6: The guidance is currently contained within the code and procedure, and we are suggesting this should be standalone. We would welcome your views on whether there are particular areas of the code, or the process for making complaints in general, that you would like to see guidance on.

No comment

Question 7: We would welcome your views on our proposed approach of setting out practical examples of code breaches in guidance, and any other comments you may have on the development of guidance.

No comment

Question 8: We would welcome your views on any changes that you would like to see in the procedure.

No comment

Question 9: We would welcome your views on the sanctions available to the committee and any changes you think may be needed to them.

No comment

Question 10: We would welcome your views on whether there should be a timeframe for complaints, and if not whether there should be any conditions on the admissibility of complaints over 12 months old.

We would suggest: You should make your complaint as soon as possible. Complaints should normally be made within 12 months of the date of the event that you're complaining about, or as soon as you found out about the problem. The time limit can sometimes be extended but only if it's still possible to investigate the complaint. (from Financial Ombudsmen Guidance)

Question 11: We would welcome your views on how the commissioner's reports should refer to sensitive information relied upon for investigations.

It should be kept confidential, unless the subject allows disclosure, but released after a defined number of years to allow for research and review.

Question 12: We would welcome views on whether the additional appeals process to the independent person – detailed above – should remain within the procedure.

No comment

**Dr John Bullivant**  
Chair of GGI Advisory Board

16 January 2021