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A handwritten signature in black ink, appearing to read "Phil Woolas".

Thank you for your letter of 23 January to the Rt Hon Ruth Kelly, asking the Department for an explanation of the Government's view that the proposal relating to the remit of the code of conduct for local authority members included in the Local Government and Public Involvement in Health Bill is compatible with Articles 8 and 10 of the European Convention on Human Rights. I am replying in my capacity as Minister for Local Government, and apologise for the delay in replying.

I should start by saying that until last October it was the Department's view that the powers provided to the Secretary of State by sections 49(1) and 50(1) of the Local Government Act 2000 allowed the general principles governing the conduct of members and the provisions of the code of conduct to include behaviour by members in their private capacity as well as their official capacity. The general principles and the code of conduct were therefore drafted on this basis.

The Standards Board has assessed that up to last October there had been at least 70 cases where members had been accused of breaching the code of conduct at least wholly or partly as a result of their private behaviour. These included cases where members were disqualified or suspended for various periods for breaches such as downloading child pornography, bullying, assaulting or threatening people, committing benefit fraud and drink driving.

Our understanding of the remit of the code of conduct changed as a result of the judgement of the High Court in the case of the London Mayor in October last year. This judgement held that in section 52 of the Local Government Act 2000, which provides that a member must give an undertaking that he or she will comply with the code, the inclusion of the words 'in performing his functions' means the provision applies only where members are performing their function, ie not in their private capacity. The judgement referred to the fact that the legislation did not make express provision for the code to apply in a member's private life and therefore cast doubt on the inclusion of behaviour in a member's private life within the remit of the code of conduct. Our intention is therefore to provide in clause 131 (now 141) of the Bill the express powers to allow the code to apply to a member at all times, and so to put the law back to the position it was prior to the High Court judgement.

Our policy as embodied in the Local Government Act 2000, and which continues to be our policy, is that the remit of the code should include some matters in members' private lives.

**We believe that in order to give public reassurance that high standards will be followed and to underline the fact that we expect members to set an example of leadership to their communities, we consider that they should be required to abide by a code of conduct provided by Parliament even when they are not acting in their role as councillors.**

**The current position, under which behaviour in private life is excluded from the remit of the code unless it is directly related to the member's official role, leads to a number of anomalies which we do not consider to be acceptable. For example, an assault by a member arising from a dispute with a fellow member at a council meeting would be proscribed by the code, but an assault carried out on a member of the public in the street or the member's home would not now be likely to be covered. Behaviour by a member, including sexual offences for which the member has been convicted, will not be covered by the code if there is no direct link between the behaviour and the member's role as a councillor. We do not consider that this provides a sensible framework for ensuring public confidence that members are following high standards of conduct.**

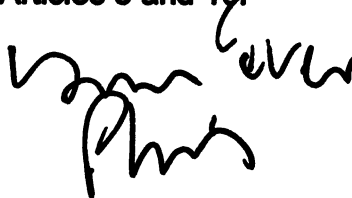
**You will also wish to be aware that I gave an assurance about my current intentions on how in practice we wish to see the code of conduct applying in respect of members' private behaviour at the Bill's Committee stage on 1 March. I made it clear that my current intention is that the code should only proscribe conduct in a member's private capacity which has resulted in a criminal conviction. I believe this would achieve a sensible balance between the need for the ethical regime to tackle serious cases of misconduct which would be of concern to the public, and to ensure a proportionate approach.**

**The inclusion of some conduct in private life within the remit of the code of conduct was supported by a majority of those who responded to the Standards Board's consultation on the code of conduct in 2005. The approach proposed in respect of behaviour in private life was set out in the Department's own discussion paper on conduct in local government in December 2005, and it has been supported by the Local Government Association, the main representative body for the local government world.**

**Whilst it could be said that in some circumstances Article 8 (right to respect for private and family life) and Article 10 (right to freedom of expression) may be engaged by clause 131 (now 141) of the Bill, we believe that in practice the clause will only ever be exercised in a way which is compatible with those rights. The rights of people to free speech and to a family life are already restricted in through a number of criminal offences. Such restrictions are considered necessary in the interests of public safety, for example, for the prevention of disorder or the protection of morals.**

**Since we are proposing that the code of conduct will only apply in respect of behaviour in a private capacity where there has been a criminal conviction, we are not interfering in any person's human rights to any extent which is greater than the criminal law already provides.**

**For the reasons indicated, we therefore consider that the proposed provision is capable of being exercised compatibly with Articles 8 and 10.**



**PHIL WOOLAS**