

Attachment 2: Recommended Benchmarks for Codes of Conduct applying to Members of Parliament (Commonwealth Parliamentary Association)

Recommended Benchmarks for Codes of Conduct applying to Members of Parliament



National Integrity (Parliamentary Standards) Bill 2019
Submission 5 - Attachment 2





ACKNOWLEDGMENTS

These Benchmarks are the outcome of a partnership between the Commonwealth Parliamentary Association (CPA) and Monash University and a subsequent CPA Workshop hosted by the Parliament of Victoria, Melbourne, Australia in April 2015, bringing together Parliamentarians and Clerks from across the regions of the CPA and other experts in the field.

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FOREWORD

As an Association, the **Commonwealth Parliamentary Association (CPA)** has continued to lead the way in Parliamentary strengthening with regards to its Benchmarks work and the implementation of the good governance values of the Commonwealth, including enhancing public trust in parliament and its members.

Following the *CPA Benchmarks for Democratic Legislatures* which were published in 2006 in collaboration with the then World Bank Institute and the UNDP, and developed by a CPA-organized parliamentary study group, attention moved to developing a Code of Conduct for Parliamentarians.

The public's trust in its representatives is a fundamental aspect of good governance and an open, transparent society. It is crucial because if Parliamentarians demonstrate high standards of ethics consistent with their important public interest roles, especially when they are scrutinising the executive arm of government, it enhances public trust.

Good conduct is crucial as it can help uncover and deter unethical behaviour and corruption. Good conduct is also crucial because it builds trust - when there are trusting relationships between the people, parliament and other institutions, democracy works at its best. When people trust that their elected representatives are acting in their best interests, this helps legitimise our parliaments and our democratic systems. Good conduct is also crucial because it is fundamental to the effectiveness of parliament in fulfilling its essential roles of legislating, approving budgets, scrutinising Executive Government and representing the public interest.

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United Kingdom.



The '*Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*' was developed by the CPA in partnership with Associate Professor Hon. Dr Ken Coghill of Monash University in Australia.

This partnership was further enhanced by a CPA Workshop for Parliamentarians on the Benchmarks for Codes of Conduct applying to Members of Parliament which was hosted by the Victoria CPA Branch in Melbourne, Australia in April 2015. The Workshop examined the importance of codes, what they should contain and how they could be implemented.

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The CPA Workshop was attended by Parliamentarians from eight out of the nine regions of the CPA with representatives from the following CPA Branches: Western Australia; Kenya; Bangladesh; New South Wales; United Kingdom; Canada; Jamaica; India; Samoa; Perak, Malaysia; Victoria, Australia. Many of the participants were experts on Codes of Conduct in their respective jurisdictions.

It is often argued that a lack of political will is the perpetrator of poorly performing ethics and anti-corruption initiatives. Perhaps political will is guided, facilitated and supported by a code of conduct that specifies a series of action-based components that are measurable and visible and where members are accountable for their actions, engendering a greater sense of political and civic responsibility.

A code can raise awareness, educate members and enable enforcement of acceptable standards of conduct. With these we can ensure the practice of civic values that instil public trust and improve the democratic health and performance of our countries.

The Commonwealth and the CPA recognize diversity as a strength: different experiences, approaches and attitudes foster variations in practices and policies which stimulate innovation everywhere. We at the CPA recognize that no single Parliament is a source of 'best practice' in all areas and that all Parliaments can be sources of valuable innovations regardless of their size or age and that in fact there are many forms of 'good practice'; which is why Benchmarks are so valuable; drawing from good practice across the CPA.

Hon. Dr Shirin Sharmin Chaudhury, MP
Chairperson of the CPA Executive Committee
Speaker of the Parliament of Bangladesh

HOW TO USE THESE BENCHMARKS

The increasing complexities of the matters with which Parliament and Members of Parliament^a must deal add to the pressures on parliamentary performance. The standards of conduct and ethical behaviour expected of Members of Parliament are rising. Codes of Conduct provide valuable guidance and direction for Members of Parliament in the contributions they make to their Parliament's functions. These Benchmarks assist parliaments in the design and revision of Codes of Conduct.^{b,1}

The Commonwealth Parliamentary Association (CPA) is committed to supporting Parliamentarians and parliamentary staff to identify benchmarks of good governance and the implementation of the good values of the Commonwealth including enhancing public trust in parliament and its members; a fundamental aspect of good governance and an open society.

The *Recommended Benchmarks for Codes of Conduct for Members of Parliament* are designed to be used by individual houses of parliament or other legislatures to assist in them to revise and strengthen existing provisions affecting the conduct of their Members or to develop new codes of conduct. The recommended Benchmarks are introduced by brief but important sections that explain the context for codes of conduct, summarised in:

- **PURPOSES AND ROLES OF PARLIAMENT**
- **PUBLIC OFFICE OF MEMBER OF PARLIAMENT**
- **PURPOSE AND ROLE OF PARLIAMENTARY CODE OF CONDUCT**

The **PRINCIPLES** on which the Benchmarks are based then follows. These draw on principles that have become widely accepted in the international community and are essential reading for an understanding of the Benchmarks. The Benchmarks are general in nature so that they can be adapted to any parliament, ranging from small states and their assemblies to the largest, and from least developed to the most well-resourced.

The CPA encourages Branches to use these Benchmarks as a set of provisions related to each other and together aimed to improve the integrity and performance of each legislature; to take the underlying contribution to integrity of each recommended Benchmark and adapt it to a particular parliamentary system so as to guide the conduct of members to benefit the performance of the parliament. Other measures to complement your Code of Conduct are described in the section **COMPLEMENTARY PROVISIONS**. Further information is available in the list of References and the Endnotes.

^a Member of Parliament is used to include all members of parliaments and legislatures e.g. Senator. ^b The

term code of conduct is used here to refer to any code or like document affecting the conduct of individual Members of Parliament.

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PURPOSES AND FUNCTIONS OF PARLIAMENTS

Parliament is the highest legislative authority in a nation, province, state or territory.

Its major functions are: legislating (examining, debating and approving new or amended laws); budget-making (approving the collection of taxes and other revenue and authorising spending by the government); representation of the citizens; and scrutiny (checking the work of government).²

PUBLIC OFFICE OF MEMBERS OF PARLIAMENT

Members of Parliament are public officers; as such, a Member must act in the best interests of the nation, province, state or territory concerned.

As public officers, they have a fiduciary relationship with the citizens on whose behalf they act and they are entrusted with responsibility to protect and uphold the common interests of the citizens. In other words, they must put the public interest above all others.³

Members of Parliament have complementary obligations to their parliament:

- their own behaviour should reflect favourably on the reputation of the institution of parliament;
- they should protect, strengthen and promote the parliament.
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Political parties exist to serve the best interests of the nation, province, state or territory as a whole, as assessed by their Members of Parliament. Again, those Members of Parliament must put the public interest above all others.

PURPOSE AND ROLE OF PARLIAMENTARY CODE OF CONDUCT

- 1.1. A Code of Conduct forms an important part of the Integrity System.⁴
- 1.2. Codes affecting the conduct of individual Members of Parliament encourage ethical conduct, reduce risks to the integrity of the Parliament as the paramount political institution, enable it to perform its functions more effectively, enhance propriety and strengthening the community's trust in Parliament.
- 1.3. A Code of Conduct for Members of Parliament applies to all office holders who are members of the House of Parliament, including the Presiding Officer, the Prime Minister/Premier/Chief Minister and ministers. 1.4. A Code of Conduct includes both aspirational provisions (what parliamentarians ought to do) and prescriptive provisions (what parliamentarians must do or not do), and should be seen as the minimum standard for conduct.⁵
- 1.5. Codes of Conduct have a purpose different from Standing Orders which are primarily rules of procedure.
- 1.6. A code should be written in a style that is simple, clear and specific.

PRINCIPLES

- 2.1. A Member of Parliament as a public officer exercises a public trust.⁶ 2.2. Members of Parliament shall behave according to the following principles:
 - **Selflessness** - Members of Parliament should act solely in terms of the public interest.
 - **Integrity** - Members of Parliament 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 of Parliament must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

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- **Accountability** - Members of Parliament are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - **Openness** - Members of Parliament 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 of Parliament should be truthful.
 - **Leadership** - Members of Parliament 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.^{7,8}
- 2.3. Members of Parliament shall:
- Act in good conscience
 - Respect the intrinsic dignity of all
 - Act so as to merit the trust and respect of the community
 - Give effect to the ideals of democratic government and abide by the letter and spirit of the Constitution and uphold the separation of powers and the rule of law
 - Hold themselves accountable for conduct for which they are responsible
 - Exercise the privileges and discharge the duties of public office diligently and with civility, dignity, care and honour.
- 2.4. Members of Parliament have individual responsibility as contributors to the functioning of the institution.
- 2.5. Parliamentary immunity (i.e. parliamentary privilege) protects the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation.
- 2.6. Members of Parliament shall respect the roles, independence, rights and responsibilities of parliamentary staff.
- 2.7. In a parliamentary democracy, every Member of Parliament has a responsibility to ensure that the Executive Government is accountable to the Parliament.

MARKS FOR CODES OF CONDUCT FOR PARLIAMENTARIANS

- 3.1 **Disclosure and Publication of Interests**
- The code shall indicate that each Member shall disclose every interest which may create a perception of conflict between an interest and the duties and responsibilities set out in PRINCIPLES. It shall prescribe provisions to which each Member is subject, with provisions to the effect as follows.
- 3.1.1 Each Member shall disclose to the Parliament all relevant interests that a reasonable person might think could give rise to the perception of influencing behaviour between the Member's duties and responsibilities and his/her personal interests (eg land and property assets, share-holdings, gifts¹⁰, foreign travel, symbolic rewards (e.g. honorary degree), sources of income, remunerated employment, directorships, liabilities, hospitality and affiliations). These may be subject to a specified thresholds. This applies to items received and could also apply to items donated or given. These shall be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament above a specified threshold.^c
- 3.1.2 A Member shall not vote in a division on a question about a matter, other than public policy (i.e. government policy, not identifying any particular person individually and immediately) in which he or she has a particular direct pecuniary interest above a threshold (if specified).¹¹
- 3.1.3 A Member shall not use for personal benefit confidential information (i.e. non-public information) gained as a public officer.
- 3.1.4 There should be an effective mechanism to verify any disclosure and to immediately notify any discrepancy in a public report to the House. The Parliament shall publish the interests disclosed and the purposes and amounts of expenditure of public funds by each Member as soon as practicable in the most accessible means available e.g. parliamentary website.^d
- 3.1.5 These provisions also apply to interests held by the member's spouse or close family members.
- 3.1.6 _____

^c Five to suggest a

dc

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3.2 **Use of Public Property**

A code should make provision to the effect that a Member may use public funds, property or facilities only in the public interest and as permitted by law (does not include for party political purposes).

3.3 **Inducements**

3.3.1 A Member shall not accept any form of inducement that could give rise to conflict of interest or influence behaviour.

3.3.2 A member shall not engage in paid lobbying, paid parliamentary advice or paid advocacy.

3.3.3 A Member shall not use his or her position to seek or secure future employment, paid lobbying, consultancy work or other remuneration or benefit upon ceasing to be a Member of Parliament.

3.3.4 A Member shall represent the interests of constituents on an equitable basis and not on the basis of personal or political affiliations, or inducements.

3.4 **Civility**

Members shall treat each other, the Parliament and the people with respect, dignity and courtesy, including parliamentary staff.

3.5 **Behaviour**

A Member shall not assault, harass, or intimidate another person.

3.6 **Attendance**

Every member shall attend every sitting of the House, in accordance with practice of the House, except with reasonable excuse, or in the case of extended absences, if excused in accordance with the practice of the House.

ETHICS ADVISER

As part of an effective implementation of a Code of Conduct, advice shall be available to individual MPs to help them decide how to deal with ethical dilemmas. A code of conduct may provide for an ethics adviser according to the following model.

4.1 The adviser shall be independent of influence by any person in giving advice. (The House should designate the title of the office¹²)

4.2 The adviser shall be selected by a non-partisan process or other method designed to secure multiparty support.

4.3 The adviser shall have knowledge, experience, personal qualities and standing within the community suitable to the office; skill in professional ethics or law is desirable.

4.4 The Code shall protect the adviser from removal except for proven misbehaviour or other reasonable grounds.

4.5 Members shall endeavour to routinely discuss ethical dilemmas with an ethics adviser.

4.6 Members if unable to discuss an ethical dilemma with an ethics adviser or having done so, remain in doubt, must act with caution and not engage in any potentially compromising action.

4.7 Advice may be sought on conflicts of interest and any issue arising from codes of conduct and ethics and integrity issues.

4.8 The adviser shall base advice in each instance on the facts as related by the MP and any other relevant facts of which s/he becomes aware.

4.9 The adviser shall not disclose the fact that s/he has been consulted, nor any information provided by the MP or any advice given to the MP. 4.10 Advice sought and given is confidential, and shall not be accessible through provisions for freedom of information. However the person who seeks written advice may make it, and the related request, public.

4.11 The adviser shall not investigate any complaint.

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ENFORCEMENT

As part of the effective implementation of a code, an independent system for investigating alleged breaches should be established; a suggested model follows:

5.1 **Complaints and Investigations**

A code shall make provisions to the effect that:

5.1.1 A complaint alleging breach of the Code by a Member shall be made to an identified office holder who must forthwith refer it to an investigator for investigation of the facts.

5.1.2 At least one investigator must be appointed by the House as soon as practicable following adoption of the Code.

5.1.3 An Investigator shall be independent of Parliament, any Member of the Parliament, Government, or political party or grouping, and is appointed for a fixed term. 5.1.4 The investigator must be selected by a non-partisan process or other method designed to secure multiparty support.

5.1.5 An Investigator shall have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to the office. 5.1.6 The Code shall protect the investigator from removal except for proven misbehaviour or other reasonable grounds.

5.1.7 The investigator may determine that a complaint is frivolous or vexatious and decline to investigate it.

5.1.8 A Member and the complainant shall treat any complaint as if sub judice.

5.1.9 Any Member of Parliament shall cooperate with and assist an Investigator in the investigation of any complaint under the Code.

5.1.10 If there is evidence of a breach of criminal law, it must forthwith be referred to the police or corruption control agency as appropriate.

5.1.11 After investigation, the investigator must present a report to the Presiding Officer (or Deputy if concerning the Presiding Officer) who must determine whether or not a breach has occurred, and if a breach has occurred, refer the report to the House for further proceedings in accordance with its rules.

5.1.12 If a complaint has become known publicly and has not been upheld, this outcome shall be made public.

5.2 **Appeal or review**

The Code shall make provision that a Member against whom a complaint has been upheld, has rights to appeal or review.

5.3 **Sanctions and penalties**

5.3.1 The Code shall specify graduated sanctions and penalties for breaches of

the Code according to the seriousness of the effects of breaches on the functioning, reputation and legitimacy of the parliament.^e

5.3.2 The Code shall specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.

FOSTERING A CULTURE OF ETHICAL CONDUCT

Each House should sustain a culture of ethical conduct reflecting a sound understanding of the parliamentary role, the public interest and the institution of parliament. Such a culture may be facilitated by:

7.1.1 Introductory and continuing education to assist Members to enhance their skills in ethical deliberation.

7.1.2 Induction which includes mentoring and experience-sharing activities involving both new and experienced Members.

7.1.3 Exemplary behaviour by those in leadership roles

7.1.4 Endeavours to detect and act to deter even minor breaches from which serious breaches may develop.

7.1.5 Members being encouraged to consult with the Ethics Advisor before acting on a matter that raises ethical issues.

7.1.6 Members acknowledging and accepting provisions of a Code of Conduct when swearing an Oath or making an Affirmation.

7.1.7 Publishing and making available the Code to both Members and the public.

7.1.8 Ensuring that newly elected members receive induction in the Code of Conduct, and engaging in self-assessment of their individual ethical competence.

7.1.9 Encouraging discussions with the ethics adviser which shall be treated as routine and normal, with frequent informal contact between the ethics adviser and Members.

7.1.10 Requiring every Member to participate in activities to enhance their ethical competence on a regular basis. These activities could be online, if resources permit.

7.1.11 Requiring Members to provide evidence on a regular basis that they have read and understood the provisions of the Code

7.1.12 Endeavouring to adapt the code to changing expectations of society with regard to ethical conduct.

^e See examples of sanctions shown in the table.

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EXAMPLES OF SANCTIONS

Sanction	Sanctions administered by	Country
Warning	House of Representatives	Grenada
	The Knesset Ethics Committee	Israel
Remark	The Knesset Ethics Committee	Israel
Formal reprimand/reprimand	Lok Sabha (House of the People)	India
	House of Representatives	Grenada
	House of Commons	United Kingdom
	House of Representatives	United States of America
Rebuke	The Knesset Ethics Committee	Israel
Severe Rebuke	The Knesset Ethics Committee	Israel
Censure	House of Representatives	United States of America
Formal Admonition/Admonition/ Admonition to abide by the standards of conduct/Admonition to refrain from presenting at the House for a certain period of time	Lok Sabha (House of the People)	India
	House of Commons	United Kingdom
	Deliberative Council on Political Ethics	Japan
Suspension from membership of the House for a specified period (which also involves loss of salary for that period)	House of Commons	United Kingdom
Suspension from office/Suspension	House of Representatives	Grenada
	The Knesset Ethics Committee	Israel
Disqualification from membership on grounds of defection	Speaker of the House	India
Order to withdraw	House of Representatives	Grenada
Loss of mandate (= Expulsion)	N/A	Fiji
	High Court	Grenada
	Lok Sabha (House of the People)	India

DIX: COMPLEMENTARY PROVISIONS

Code of Conduct is complemented by other structures and practices in the operation of parliament, government and the law which are essential to its effectiveness. These vary greatly according to the scale and historical development of each system of government. The Parliament should aspire to identify complementary norms, institutions and mechanisms which collectively enable the effective performance of the Parliament and the wider system of government. Features of these are suggested as follows:

Integrity System

- The Integrity system is the overarching system including codes, norms (e.g. ethical behaviour), institutions (e.g. corruption control commission) and mechanisms (e.g. special investigative powers) designed to reduce corruption and enhance integrity. The links between integrity bodies are important. The extent, strength and degree of interconnectedness (including systemic and non-systemic dimensions), overlaps, conflicts and mutual supports affect how an integrity system actually works. The size and resources of a nation, province, state or territory will influence the institutional structure and mechanisms of its integrity system. Accordingly, it is useful to consider essential structures and the functions to be provided.

These structures may include:

1. A supreme audit institution (SAI) (e.g. Chief Financial Controller, Comptroller General, or Auditor General), established by act of parliament, being an independent officer of the parliament
 - 1.1.1. An ombudsman, also being an independent officer of the parliament, established by act of parliament
 - A parliamentary public accounts committee, chaired by a non-government Member of Parliament, with powers and resources to critically review government policies and expenditure
 - Parliamentary immunity (i.e. parliamentary privilege) protecting the right of Members of Parliament to speak in parliament without fear of prosecution or suit for defamation
 - A non-partisan institution, established by act of parliament, authorised and empowered to regulate the receipt of donations and other funds and expenditure by political candidates and parties.
 - 1.1.2. These functions may include:
 - The capacity for independent, thorough investigation of allegations of unethical or corrupt behaviour
 - public interest disclosure (“whistle-blower”) legislation, to include application to Members, Officers and staff of Parliament.

	The Knesset	Israel
	House of Commons	United Kingdom
Disqualification to hold public office	N/A	The Philippines
Committal	House of Commons	United Kingdom
Imprisonment	Lok Sabha (House of the People)	India
	N/A	The Philippines

Adapted from: Bruce 1996; Mawer 2006.

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2. **Election campaign donations and expenditure**

2.1. Each Member shall disclose to the relevant authority all donations received or donated towards political campaign costs and other political expenses and all expenditure for campaign and other political costs, including political party funds for which the Member has any responsibility; these must be disclosed immediately following election and continuously updated within a reasonable period specified by the parliament.

3. **Ministerial Code of Conduct**

3.1. A Ministerial Code of Conduct for members of the Executive shall apply in addition to the Code of Conduct for Members of Parliament; the latter applies to all members of that parliament, including the Presiding Officer(s) and members of the Executive.

3.2. A Ministerial Code of Conduct shall be issued by the head of government i.e. Prime Minister, Premier or Chief Minister of the nation, province/state or territory.

3.3. Breaches of the Ministerial Code of Conduct shall be dealt with by the head of government.

3.4. The provisions of such a Code are beyond the scope of these Benchmarks.

4. **Code of Conduct for Parliamentary Officers**

4.1. A Code of Conduct for Parliamentary Officers and staff may be adopted to complement the Code of Conduct for Members of Parliament.

4.2. The provisions of such a Code are beyond the scope of these Benchmarks.

5. **Post-parliamentary employment by former Members of Parliament**

5.1. Any regulation of post-parliamentary employment, remuneration or other benefits received by former Members of Parliament shall be by act of parliament, as non-statutory codes cannot bind non-Members.

6. **Lobbyists, Lobbying Register**

6.1. Regulation of lobbying, including registration of lobbyists, shall be by act of parliament, as non-statutory codes cannot bind non-Members.

7. **Civil Society's Role**

7.1. Members of Parliament and Parliamentary Officers and staff should actively enable monitoring and reporting by civil society organisations of compliance with the Code of Conduct.

8. **Political Parties**

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ENDNOTES

¹ Provisions similar to provisions in a Code of Conduct may be included in: Act of parliament; Conflict of Interest Code; Code of Official Conduct; Code of Ethics; rules of procedure; Standing Orders. Codes of Conduct and Codes of Ethics are often distinguished e.g. as follows:

Codes of ethics *“are usually products of professional associations. They serve as a quality assurance statement to society and provide a set of standards for appropriate conduct for members of the profession that issues the code. Codes of ethics for those in government service challenge employees to identify with shared professional values that describe appropriate actions about acting rightly in the service of the public good”* (Bruce, 1996, 23).

Codes of conduct are quite different. They *“. . . are more concrete and practical . . . for they represent executive orders or legislatively defined and enforceable behavioral standards with sanction for violation. They contain a list of the kinds of behavior required in a given set of circumstances and provide direction to those whose conduct they govern. Codes of conduct contain minimalistic prohibitions to unquestionably subversive or criminal acts. They are designed to protect the government employee, the client, and/or the public at large”* (Bruce 1996, 24). (Pelizzo & Stapenhurst, 2006, p. 199)

² Adapted from (Parliament UK, no date)

³ The responsibility of Members to act in the common interests of all people represented in the parliament reflects their fiduciary duty. Fiduciary relationships are explained by Finn as requiring that where a person has been empowered to act in the interests of others, he or she must do so and not act in self-interest (Finn, 2012).

Sir Gerard Brennan, retired Australian Chief Justice, stated *“It has long been an established legal principle that a Member of Parliament holds ‘a fiduciary relation towards the public’ and ‘undertakes and has imposed upon him a public duty and a public trust’ ”* (2013).

Sir Gerard Brennan has explained that *“The obligations cast on members of Parliament and officers of the Executive Government are many and varied and the law takes cognizance of the realities of political life, but asserts and, in interpreting statutes,*

assumes that the public interest is the paramount consideration in the exercise of all public powers...Whenever political action is to be taken, its morality – and, indeed, its legality – depends on whether the public interest is the paramount interest to be served...Power, whether legislative or executive, is reposed in members of the Parliament by the public for exercise in the interests of the public and not primarily for the interests of members or the parties to which they belong”(Brennan, 2013)

⁴ Integrity Systems are a form of risk management that provide insurance against corruption. They include norms (e.g. ethical behaviour), institutions (e.g. corruption control commission) and mechanisms (e.g. special investigative powers) designed to reduce corruption and enhance integrity. The extent, strength and degree of interconnectedness (including systemic and non-systemic dimensions), overlaps, conflicts and mutual supports affect how an integrity system actually works (Sampford, 2014).

⁵ The Australian House of Representatives Committee reported that codes of conduct which it examined *“seemed to fall into the two categories ... – prescriptive or aspirational. One approach is to establish a more directive or prescriptive code which would include quite detailed rules and be a rather lengthy statement. The aim of a prescriptive code is to provide a comprehensive account of the conduct required of members in all conceivable situations. The alternative approach is for a more aspirational set of principles from which each member must determine his or her own behaviour. An aspirational code aims to provide a frame of reference for making decisions that involve competing values.”* ((House of Representatives Standing Committee of Privileges and Members’ Interests (Australia), 2011), p.29).

Few if any codes are solely either aspirational or prescriptive. A code including both aspirational and prescriptive provisions is more likely to be effective according to the research leading to these Benchmarks.

- ⁶ As a holder of public office, a Member must avoid:
- official misconduct that involves a breach of powers and duties entrusted to a Member for the public benefit and in which the Member has abused them or his position;
 - wilful neglect of duty;
 - wilfully embarking on a course of action which the Member has no legal right to undertake;
 - oppression and extortion;

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- incompatible positions;
- arrangements which are in conflict with his or her official duties;
- bribery;
- misuse of public property.
(adapted from (Smith, 2014))

⁷ These principles are adapted from *The Seven Principles of Public Life* (“Nolan Principles”) for holders of public office (Committee on Standards in Public Life, 1995).

⁸ See also the general principles to govern the conduct of members of relevant authorities in England and police authorities in Wales as follows:

Selflessness

i. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity ii. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

iii. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability iv. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

v. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement vi. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others vii. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect

the impartiality and integrity of the authority’s statutory officers, and its other employees.

Duty to Uphold the Law viii. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship ix. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

x. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Statutory Instrument 2001 No. 1401. The Relevant Authorities (General Principles) Order 2001 (United Kingdom). Retrieved 18 March 2015 from http://www.tisonline.net/ContentUploads/CaseUploads/RelAuthOrder_6102009154823.doc

⁹ This section is adapted from the Politicians’ Pledge (St James Ethics Centre, 2015).

¹⁰ This is not to suggest a total ban on accepting or donating gifts but it recognises that the very act of offering or receiving a gift establishes a favourable predisposition to the other person, irrespective of the value of the gift (Malmendier & Schmidt, 2012). Total bans on accepting any gifts risk leading to failure by even the most ethical Members of Parliament. Once a person is tainted as unethical for accepting or offering a gift no matter how commonplace, reasonable, and harmless social behaviour, critics have a tool with which to tar and tarnish the reputation the individual, and other Members of Parliament (Kania, 2004). Disclosure greatly reduces the risk of appearance of impropriety.

¹¹ Adapted from House of Representatives Practice (House of Representatives (Australia), 2012).

¹² Examples of titles include: Conflict of Interest and Ethics Commissioner; Parliamentary Ethics Adviser; (Parliamentary) Integrity Commissioner; Parliamentary Commissioner for Standards.

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