

SECTION 5 OF THE MODEL CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 5 of the Model Code of Conduct for Members of Devolved Public Bodies, issued by the Scottish Ministers, and the accompanying Guidance on the section produced by the Standards Commission. The Model Code is displayed in purple text, with the Guidance in black and case examples in blue. The Guidance numbering follows that of the Standards Commission's standalone Guidance document.

While this document covers Section 5 only, members should bear in mind the provisions of Section 1 of the Code which sets out their responsibilities and when the Code applies. Members should also have regard to Section 2 of the Code, which outlines the nine key principles of public life on which the Code is based.

SECTION 5: DECLARATION OF INTERESTS

- 133** The requirement for members to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a member's role and denies the public the opportunity to consider whether a member's interests may or may not influence their discussion and decision-making.
- 134** Should you be in any doubt about the legal implications of your participation in a public body discussion or decision, you should seek advice from your Standards Officer, Chair or Chief Executive before taking part.

Stage 1: Connection

5.1 For each particular matter I am involved in as a board member, I will first consider whether I have a connection to that matter.

- 135** In your work as a member, you will have connections with a great number of people and organisations. In the same way, your financial affairs, employment and property holdings – or those of individuals close to you or bodies you are involved with – will sometimes mean that you have a connection to a matter that your public body is considering, in some way.
- 136** Such connections will not always amount to an interest that you are required to declare. However, you should always consider whether this is a possibility, in the context of your role as a member and in respect of any specific matter you are being asked to consider. You should always err on the side of caution, and if you are in any doubt you should consult your public body's Standards Officer.
- 137** It should be noted that a subject that may apply to a large proportion of the general public would not generally be considered to give rise to a connection for the purposes of the Code. For example, being a taxpayer, or being in receipt of a state pension or universal credit.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

- 138** The Code cannot provide for every type of relationship that could result in a connection, as this will depend on the facts and circumstances; for example, how close you are to the individual in question and how often you see them. It should be noted, however, that certain relationships such as spouse, partner, cohabitee, close friend, parent or child are likely to result in a connection.
- 139** It is impossible to list every type of connection you could possibly have with a matter involving or to be considered by your public body. However, some common examples would include:
- your public body considering some form of financial assistance or decision that could have a direct effect on an organisation you, your partner, or someone close to you works for;
 - your membership of another body or organisation that is seeking to agree a contract with your public body;
 - some form of personal connection with a person making an application, or a complaint, to your public body.
- 140** The Code does not restrict the ability of a public body to benefit from the knowledge and experience of its members. Having knowledge or experience of a matter that is to be considered by your public body is not necessarily a connection. For example, if your public body is considering tenders received for the provision of a new IT system, your knowledge and experience as an IT specialist would not be considered a connection.

- 141** It is also recognised that some members are appointed to public bodies in a representative capacity. For example, carer or third sector representatives on Health and Social Care Integration Joint Boards, or student representatives on a college board. Being appointed to a board in a representational capacity or for a particular reason is not in itself a connection. For example, being a carer representative on a health and social care integration joint board (IJB) would not be considered a connection in respect of all matters before the IJB that could affect carers. Such a representative may have a connection (that in turn could amount to a declarable interest if the objective test is met), if the specific matter being considered or discussed by the IJB affected them directly and individually.
- 5.3 A connection includes anything that I have registered as an interest.**
- 142** Paragraph 5.3 of the Code makes it clear that anything you have registered as an interest in terms of Section 4 of the Code (Registration of Interests) would be considered a connection for the purposes of Section 5.
- 5.4 A connection does not include being a member of a body to which I have been appointed or nominated by my public body as a representative of my public body, unless:**
- a. **The matter being considered by my public body is quasi-judicial or regulatory; or**
 - b. **I have a personal conflict by reason of my actions, my connections or my legal obligations.**
- 143** You should also be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles. Membership of a body you have been appointed or nominated to by the public body, as its representative, would not normally be a connection.
- 144** However, this does not apply where the matter being considered by your public body is quasi-judicial or regulatory in nature. An example of where you would have a connection as a member of a different body would be where the other body has applied for a licence or consent from your public body, or is an objector to such an application. This is regardless of whether or not you actively participated in the decision by the other body to make the application or objection.
- 145** In terms of being a member of an outside body, the Code also states you may have a connection where you have a personal conflict, either by reason of:
- a. your actions;
 - b. your connections (other than your membership of the outside body); or
 - c. your legal obligations.
- 146** An example of where you may have a personal conflict, and therefore a declarable interest, **by reason of your actions** could be where, just before being appointed to your board, you made critical comments in the press about another organisation's wastefulness in terms of expenditure. If, following your appointment, the other organisation makes a funding application to your public body it is likely that your actions may have resulted in you having a personal conflict.
- 147** An example of where you may have personal conflict **by way of a connection** (other than solely from your membership of the outside body) would be where your partner works for the outside body, and the body is seeking funding from the public body for its operations that could have an impact on your partner's job.

148 Examples of where you may have a personal conflict **as a result of legal obligations** would include where you are either a director of a company or a charity trustee. Both the Companies Acts and the Charities and Trustee Investment (Scotland) Act 2005 impose obligations on you to act in the best interests of the company or charity, and those obligations may conflict with your role as a member. If you are in doubt as to what your legal obligations are to the outside body, you should seek advice from its legal advisers.

Stage 2: Interest

5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

149 Having decided that you have a connection to a particular matter, you should apply the objective test to that connection to decide whether it amounts to an interest that requires to be declared.

150 The **objective test** outlined in paragraph 5.5 of the Code assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the connection as so significant that it would be likely to prejudice your discussion or decision-making in your role as a member. If the answer is yes, the connection is an interest which you should declare.

151 At all times when applying the objective test, you should be aware that it is just that – objective. The test is not what you yourself know about your own motivations and whether the connection would unduly influence you: it is what others would reasonably think, if they were in possession of the relevant facts.

152 There may be instances where, having applied the objective test, you consider the connection is so remote and insignificant that you do not think it amounts to an interest. Examples might be where a charity you occasionally donate to is seeking funding from your public body, or when a neighbour you have little social contact with works for a company that has a contract to provide cleaning services for the building where your public body's offices are located.

A complaint alleged that a member of a public body sat on the Appointment Panel for the recruitment of a new Chief Executive, despite being a close friend of one of the candidates. Having reviewed all evidence, including that given by witnesses at the Hearing, the Panel determined that there was no breach of the Code. This was because there was no evidence that the member's association with, or connection to, the candidate in question went beyond a limited professional relationship or that they had engaged in any contact outside a work setting. The Panel concluded that a member of the public, with knowledge of these relevant facts, would not reasonably regard the member's connection as being so significant that it would be considered as being likely to influence their discussion or decision-making. As such, the connection did not amount to an interest that would require to be declared for the purposes of Section 5 of the Code.

A member of a health board took part in a discussion about snagging issues in respect of the construction of a new hospital, despite having previously been engaged in a claim for legal damages against a subsidiary of the construction company, in respect of a private property. Having applied the objective test, the Panel determined that while the member had a connection to the company, this did not amount to a declarable interest. This was because the Panel did not consider that a member of the public, with knowledge of the relevant facts (being the fact that the legal dispute had concluded and was against a subsidiary company), would reasonably regard the member's connection to the matter as being sufficiently significant as to be likely to influence her discussion on the snagging issues in her role as a member.

- 153** Section 3 of the Code sets out the very limited circumstances in which you would accept gifts and hospitality. As you must apply an objective test when deciding whether or not to accept any gift or hospitality being offered, it would be unusual for such a gift or hospitality to be so significant that it would constitute an interest.
- 154** When making a declaration of interest you only need provide enough information for those at the meeting to understand why you are making a declaration. For example, it may be sufficient to say: *“I declare an interest as my partner is a member of the organisation making the application”*. You might not necessarily need to provide details about how long your partner has been a member and in what capacity.
- 155** You must disclose or declare your personal interests both in formal and informal dealings with public body employees and other members, not just in formal board or committee meetings. This is an important consideration, especially when you are seeking advice or assistance from public body employees or other sources. You should not assume that employees and others will know or will remember what your interests are.
- 156** You should be mindful of the need to protect the confidentiality of another person’s business or financial interests when making a declaration of interest. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

A complaint alleged that a member took part in a discussion at a NHS Board meeting on review of child health and medical paediatric inpatient services at a local hospital, where a freedom of information (FoI) request and press coverage were considered. This was despite being aware that an FoI request had been submitted to the Health Board on behalf of his employer, who was a Member of the Scottish Parliament. The employer, who had an interest in retaining certain services under consideration, had previously raised the issue in the Scottish Parliament and had made public statements in the press. The Panel found that the member had failed to apply the objective test as, had he done so, he would have realised that in taking part in the discussion, where issues and concerns that were similar to those raised by his employer could be raised, a member of the public with knowledge of the relevant facts might reasonably conclude that he could be influenced by his employer. The Panel concluded that the nature of an employee / employer relationship could not reasonably be considered to be remote or insignificant. The member was found to have breached the Code.

A complaint alleged that a member had not declared an interest at a board meeting where reports were presented about the public body’s contribution towards the funding of certain voluntary organisations, which included her employer. This was despite her employer having been mentioned specifically in reports considered at the meeting in question. It was found that the member should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meeting. She was found to have breached the Code.

A college board was considering a plan for the restructuring of the college’s academic faculties. Though the exact details of the restructuring were not yet finalised, it was likely that the plan would result in a number of job losses. A board member, who had a close friend employed as a lecturer in one of the faculties potentially under threat by the restructuring, failed to declare that friendship as an interest. By failing to declare the interest, the Panel found that the member had breached the Code. Although it was not certain that the restructuring would have resulted in the loss of his friend’s job, a member of the public, with knowledge of the relevant facts, could reasonably have regarded the member’s friendship as being likely to prejudice the discussion and decision-making related to the restructuring.

Stage 3: Participation

- 5.6** I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.
- 157** If you decide that you should declare an interest, you should do so at the earliest opportunity. If you only realise a declaration is necessary when the discussion in respect of a matter is underway, you may wish to consider whether you should provide a brief explanation as to why you had not realised you had an interest at the outset of the meeting.
- 158** Thereafter, when the item is being considered, you should leave the room. It is not sufficient for you to retire to the back of the room or the public gallery. If the meeting is being held online, you should retire to a separate breakout room or leave and re-join after the discussion on the matter has concluded. It is not sufficient for you to turn off your camera and / or microphone for the duration of the matter.
- 159** You should not give anyone reason to doubt that you are no longer in any position to influence the outcome of deliberations on the relevant item either directly or indirectly. This means that you should refrain from contacting your member colleagues remotely (for example by email or text) while they are considering the item.

A member who was involved in a decision regarding whether to retain paediatric A&E services at a specific hospital, made a declaration of interest stating that their partner was a nurse in the A&E department in question. The member's declaration was noted and they were asked to leave the meeting, which was being held online. However, instead of fully leaving the online meeting, the member simply switched off their camera, meaning that they were still able to see and hear the proceedings. The member then sent WhatsApp messages to their colleagues on the board, outlining further arguments as to why the A&E services should be retained. The Panel found that the member had breached the Code.

Part of the agenda for a public body's board meeting dealt with consideration of a proposed memorandum of understanding between the public body and a university. At the outset of the board meeting, a member, who was also Chancellor of the university in question, declared an interest. When the agenda item arose, the member excused themselves from the board meeting and left the room, returning only when discussion of the memorandum had completed. The member's declaration, together with the fact they had left the meeting, was documented in the board minutes. The member had, therefore, acted in accordance with the Code.

- 160** Where the only interest is in relation to an item included in an agenda which is before the public body or one of its committees, for noting or formal approval, no declaration is required unless it is then decided that the item needs to be discussed or debated as a substantive issue.
- 161** You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code. The Standards Commission has produced an Advice Note for Members on How to Declare Interests, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

- 162** You may wish to check that any declaration of interest you have made at a formal meeting is recorded in the minute with the relevant agenda item identified. For example: *“Ms A declared an interest in relation to the funding application at Agenda Item 16 as she is a director of the company making the application. Ms A therefore left the room and took no part in the discussion or decision-making on that item”.*
- 5.7** I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.
- 163** You may wish to think about whether you should indicate why you consider any connection you have to a matter does not amount to a declarable interest. This is particularly if you know that members of the public are aware of your connection, but where you suspect they may not have knowledge of all the relevant facts.
- 164** In those circumstances you might want to make a transparency statement. For example, you could state: *“I have a connection to this item by reason of... However, having applied the objective test I do not consider that I have an interest to declare. This is because...”.* If you think it would be helpful, you can ask the employees who are clerking the meeting to note your transparency statement in the minutes. Similarly, you may wish, for the sake of transparency, to state that you were offered, but turned down, a gift or hospitality.
- 5.8** I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the dispensation is sought and that I cannot take part in any discussion or decision-making on the matter in question unless, and until, the application is granted.
- 165** The Standards Commission can consider requests for dispensations in certain circumstances, either from a member as an individual or to a class or description of members who are affected by a particular category of interest.
- 166** Any application for a dispensation should be submitted either by email to enquiries@standardscommission.org.uk or by mail to the Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP. Any application should detail all the relevant information, including the reasons why a dispensation is sought. Factors to consider before making the application include whether:
- it would be in accordance with both the spirit and intent of the Code to grant the dispensation; and
 - you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.
- 167** The Standards Commission will respond as soon as practicable after receipt of all information, usually within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members work on a part-time basis, so this may not always be possible. As such, all applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.
- 168** If a dispensation is granted, you should consider stating this at the meeting, and asking for this to be recorded in the minutes.

5.9 I note that public confidence in a public body is damaged by the perception that decisions taken by that body are substantially influenced by factors other than the public interest. I will not accept a role or appointment if doing so means I will have to declare interests frequently at meetings in respect of my role as a board member. Similarly, if any appointment or nomination to another body would give rise to objective concern because of my existing personal involvement or affiliations, I will not accept the appointment or nomination.

169 There is no definition for what may constitute a ‘frequent’ declaration of interest in terms of paragraph 5.9 of the Code, as this will depend entirely on the specific facts and circumstances of each case and how often the matter in which you have an interest is discussed by the public body. For example, declaring the same interest at four meetings of a public body that only meets on a quarterly basis might be considered ‘frequent’. However, this may not necessarily be the case if the public body met twice a month and discussed the same matter in which you have an interest at a few consecutive meetings.