

SECTION 6 OF THE MODEL CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 6 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 6 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 6: LOBBYING AND ACCESS

- 6.1 I understand that a wide range of people will seek access to me as a board member and will try to lobby me, including individuals, organisations and companies. I must distinguish between:
- any role I have in dealing with enquiries from the public;
 - any community engagement where I am working with individuals and organisations to encourage their participation and involvement, and;
 - lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my public body (for example contracts/procurement).
- 6.2 In deciding whether, and if so how, to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to influence my, or my public body's, decision-making role.
- 6.3 I will not, in relation to contact with any person or organisation that lobbies, do anything which contravenes this Code or any other relevant rule of my public body or any statutory provision.
- 6.4 I will not, in relation to contact with any person or organisation that lobbies, act in any way which could bring discredit upon my public body.
- 6.5 If I have concerns about the approach or methods used by any person or organisation in their contacts with me, I will seek the guidance of the Chair, Chief Executive or Standards Officer of my public body.
- 6.6 The public must be assured that no person or organisation will gain better access to, or treatment by, me as a result of employing a company or individual to lobby on a fee basis on their behalf. I will not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which I accord any other person or organisation who lobbies or approaches me. I will ensure that those lobbying on a fee basis on behalf of clients are not given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming.
- 6.7 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 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](#).
- 6.8 I will not accept any paid work:
- which would involve me lobbying on behalf of any person or organisation or any clients of a person or organisation.
 - to provide services as a strategist, adviser or consultant, for example, advising on how to influence my public body and its members. This does not prohibit me from being remunerated for activity which may arise because of, or relate to, membership of my public body, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

- 170** As a member, you will be approached by those wishing to make their views known. This is perfectly legitimate and should be encouraged, as it is important that individuals are able to engage with public bodies.
- 171** Paragraph 6.1 of the Code sets out some of the ways in which you, as a member, may be lobbied. For example, you may be lobbied by a service user on a personal issue, such as the service your public body is providing. You may be approached by someone seeking financial or other benefit from the public body, either by way of a contract for goods or services, or some form of licence or consent.
- 172** It is easy for the lines between these different types of approach to become blurred, particularly when you are dealing with casework or regulatory matters, such as planning or licensing. It is important to recognise, however, that the integrity and reputation of the public body's decision-making process depends on openness, transparency and following proper process. There is a risk that private meetings with lobbyists, particularly those that fall outwith the public body's procedures, and where employees are not involved, will undermine or could reasonably be perceived as undermining this.
- 173** Lobbyists can expect to deal with public body employees at certain stages of an application process. If you are seen as facilitating an approach outwith the normal process, there may be a perception that you have allowed the lobbyist special access to the decision-maker and that you are bypassing employees. As such, if you are approached by anyone about a pending decision of any kind, you should advise the employees who are dealing with the matter and give them all relevant information.
- 174** Paragraph 6.5 of the Code notes that if you have concerns about the approach or methods used by any person or organisation in their contacts with you, you can seek the guidance of the Chair, Chief Executive or Standards Officer. You can also seek advice from a colleague or external advice, as you deem appropriate.
- 175** Discussing the information you have received from lobbyists with employees will give you an opportunity to establish if it is something that they were not aware of and / or if it is relevant to any decision you will be making. It may be that lobbyists will present information in a way that is favourable to their case, but which does not give the complete picture. Employees can give you professional advice on what may or may not be a relevant consideration in respect of any decision you will be making.
- 176** Even if you do not make casework or regulatory types of decisions, there are still likely to be issues under the Code that you will need to consider. In particular, it would be a breach of the Code for you to lobby employees who are making decisions on casework or contracts, either on your behalf, or on behalf of others.

Service User Enquiries

- 177** As a member of a public body, you have a representative role and, as such, may be approached by service users. Allowing service users to advise you of their views, including any concerns, helps ensure the public body is perceived as being open, accessible and responsive to the needs of the public. When you respond, you should be mindful of the need to treat everyone with respect, and to otherwise promote the key principles outlined in Section 2 of the Code. In some cases, however, you may feel that there is nothing further to be gained by responding to a service user and that you are not able to help them further. In those circumstances, you should politely inform the service user that is the case.

- 178 You are entitled to raise a service user's enquiry with the relevant employee, although you should, at all times, follow your public body's policies on the processing of personal data. You can ask questions about how a service has been delivered, and can seek information on progress on behalf of a service user, but you should be careful not to stray into operational management (for more advice on this, please see the Standards Commission's Advice Note for members on distinguishing between their strategic role and any operational work, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>).
- 179 You should be aware of the distinction between a service user's request for service (or for information about a service), and a complaint about a service received. In the latter case, you should recommend that the service user makes use of the public body's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the [Scottish Public Services Ombudsman](#), if necessary and as appropriate.
- 180 Inevitably there will be occasions where the service user looking for your help is also a public body employee. While they are entitled to do so as a private individual in the same way as any other service user, you should decline to get involved in anything which relates to their status as an employee (such as performance or attendance management). You are a member of the organisation that employs them, and employment matters should be handled by their line manager or their union representative, as appropriate.

Lobbying

- 181 Paragraph 6.7 of the Code notes that it is important that you understand the basis on which you are being lobbied in order to ensure that any action taken in connection with a lobbyist complies with the standards set out in the Code and the [Lobbying \(Scotland\) Act 2016](#). This Act aims to increase public transparency about lobbying and defines particular types of communication as 'regulated lobbying'. From 12 March 2018 anyone who engages in regulated lobbying must record details of their activities on a Lobbying Register website. Regulated lobbying only involves lobbying when it takes place face-to-face with:
- Members of the Scottish Parliament;
 - Members of the Scottish Government (including the Scottish Law Officers); and
 - Junior Scottish Ministers; the Permanent Secretary of the Scottish Government; and Scottish Government Special Advisers.
- 182 Private meetings with lobbyists – whether professional lobbyists or members of the public seeking your support – can undermine public trust in decision-making processes. It can also have consequences for the lobbyist. For example, a private meeting could disqualify them from the tender process if they are bidding for a public body contract. Private meetings can also involve offers of hospitality, which could lead to a breach of the gift and hospitality provisions at paragraphs 3.13 to 3.21 of the Code.
- 183 If you are approached by a lobbyist, it is likely that they are seeking your involvement as a lobbyist in turn, whether as a decision-maker or otherwise. It is important to recognise that there is a difference between lobbying on behalf of a commercial or personal interest, and lobbying for a policy change or benefit which affects a group of people, a community, or an organisational sector. You should always consider what will benefit the public body and its service users as a whole, not just any narrow sectoral interest.

- 184** You must not, in any case, accept any paid work in which you give advice on how to influence your public body. An example of a breach of the Code in this regard could be if a member of the Standards Commission provided paid consultancy services to a political party in respect of how to best respond to complaints and represent its members at Hearings convened to consider potential breaches of Codes.
- 185** In all situations, care is needed. You should be guided by the Code and, in particular, consider:
- could anything you do or say be construed as you having been improperly influenced to take a particular stance on an issue;
 - are you giving, or could you be perceived as giving, preferential access to any one side of an argument;
 - when seeking information on the progress of a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support; and
 - are you reaching your own view on a matter having heard all the relevant arguments and evidence (including the guidance of public body employees), and not simply agreeing or complying with any view expressed by your member colleagues.
- 186** If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions concerning that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard and considered all relevant and material evidence and information. However, you can:
- advise employees of the representations you have received;
 - assist service users in making their views known to the relevant employee;
 - seek factual information about the progress of a case; and / or
 - advise those that are lobbying who they can contact (being the relevant employee).

A board member introduced a change to her public body's funding application policy, which was subsequently approved by the board. Following board approval, a service user sent the member an email complaining about the policy change. The member referred the service user's email to the Chief Executive for an employee response. The service user complained that the member's failure to respond indicated that she did not want to engage with him and had denied him access. The Panel noted, however, there was no specific obligation under the Code for individual members to respond to all who seek to lobby them. The Panel considered that the member had acted appropriately in referring the email to the Chief Executive so that the appropriate employee could respond. As such, it determined that the complaint did not amount to a breach of the Code.

A complaint alleged that a councillor had been involved in a 'secret' meeting with some local residents. The outcome of the meeting resulted in a Traffic Regulation Order (TRO), which ultimately led to the introduction of parking restrictions. The complainer alleged that, by attending the meeting, the councillor had failed to be accessible to the public and had demonstrated bias in favour of some residents. It was established, however, that the councillor had been accompanied at the meeting by an officer from the Council's Roads Services. No evidence was found that the councillor had indicated support for or against the making of the TRO, and as such his conduct did not give rise to a breach of the Code.

A complaint alleged that a Health Board member had held an individual meeting with a supplier of medical equipment, despite knowing that the supplier was involved in an ongoing tender process. The member met with the supplier alone, without taking an employee of his public body, and without informing his board in advance that he was meeting the supplier. At the next meeting of the board, the tender applications were discussed and the supplier in question was awarded the contract. The Panel found that by meeting with the supplier alone and by subsequently taking part in the discussions and decision-making over the tender, the member had breached the Code. It was likely that a member of the public, with knowledge of the relevant facts, would perceive that the member had offered preferential treatment to the supplier compared to the other suppliers involved in the tender.

A member of a board involved in the provision of grant funding accepted payment from a lobbying organisation. At a subsequent board meeting, convened to discuss and decide upon a round of funding, the member posed a number of critical questions and made derisive comments regarding the majority of the funding applicants. The member did not, however, criticise or comment upon an application for funding by a body that transpired to be a client of the lobbying organisation. The Panel found that by accepting the payment from the lobbying organisation, the member had breached the Code and, further, that it was clear from his actions in the board meeting that, in return for the payment, he was attempting to accord preferential treatment to the lobbying organisation's client.