

SECTION 3 OF THE COUNCILLORS' CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 3 of the Councillors' Code of Conduct, issued by the Scottish Ministers, and the accompanying Guidance on the section produced by the Standards Commission. The Councillors' 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 3 only, councillors should bear in mind the provisions of Section 1 of the Code which sets out their responsibilities and when the Code applies. Councillors 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 3: GENERAL CONDUCT

Respect and Courtesy

- 3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.
- 3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.
- 3.3 I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.
- 3.4 I accept that disrespect, bullying and harassment can be:
 - a. a one-off incident,
 - b. part of a cumulative course of conduct; or
 - c. a pattern of behaviour.
- 3.5 I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.
- 3.6 I accept that it is my responsibility to understand what constitutes bullying and harassment and I will utilise resources, including the Standards Commission's guidance and advice notes, council policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.
- 3.7 I will not become involved in operational management of my council's services as I acknowledge and understand that is the responsibility of its employees.
- 3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.
- 3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.
- 3.10 I will follow the Protocol for Relations between Councillors and Employees at [Annex A](#) and note that a breach of the Protocol will be considered a breach of this Code. I will also comply with any internal protocol the Council has on councillor / employee relations.
- 3.11 I will respect and comply with rulings from the chair or convener during meetings of:
 - a. the Council, its committees or sub-committees; and
 - b. any outside organisations that I have been appointed or nominated to by the Council or that I represent my council on.

Respect and Courtesy: General

- 23 You must treat everyone you come into contact with in your role as a councillor with courtesy and respect, even if you disagree with their views. This can include employees, members of the public and fellow councillors.
- 24 It should be noted, in the context of paragraph 3.1 of the Code, that meetings can include virtual meetings or other forms of remote working via platforms such as MS Teams, Skype and Zoom.
- 25 While you are entitled to express your views and to disagree with others, you must do so in a respectful way. It is usually better to try to focus on the issue itself, rather than making any personal comments about an individual.
- 26 You should always be mindful about how others could reasonably perceive your conduct, and that even if it is not your intention to be disrespectful or discourteous, your behaviour could be interpreted as such.
- 27 If you make a comment in the heat of the moment, which you do not mean and then regret, you should consider retracting it and / or apologising. Bear in mind, however, that comments made on social media may have been circulated widely by the time you seek to retract them or apologise.
- 28 You should always think ahead. If you have any concerns about a potential problem, speak to your Council's Monitoring Officer or their deputies so that advice can be sought and / or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and / or a complaint being made about you. The fact that you have sought advice, or indeed failed to seek advice, may be taken into account at a Hearing. Similarly, evidence of an immediate apology or retraction may be a mitigating factor at a Hearing.
- 29 You should ensure you are familiar with the Equality Act 2010, which provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Equality and Human Rights Commission has produced guidance on the Equality Act, which can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance>.

Respect and Courtesy: Applicability of the Code

- 30 It is very important to note that the rules of good conduct set out in Section 3 of the Code must be observed in all situations where you are acting as a councillor, which includes when you are representing the Council on official business.
- 31 The Code is also applicable in all situations where you have identified yourself as a councillor or where you might objectively be perceived to be acting as a councillor. You should be mindful, therefore, that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. Factors to consider include whether:
 - you are clear about the capacity in which you are acting;
 - you describe yourself as a councillor or are otherwise readily identifiable as a councillor in the situation / circumstances;
 - you are on Council premises or at a Council event;
 - you are using IT equipment and / or an email account supplied by your Council;
 - your conduct could reasonably be regarded as bringing your position as a councillor, or your Council, into disrepute;
 - you are engaged in political activity or commenting on political matters, and whether these fall within or outwith the scope of the Council's functions; and
 - you are representing the Council or speaking on behalf of the Council.

- 32** Due to the public nature of social and print media, and your profile as a local authority member, you may wish to consider whether members of the public might automatically assume you are commenting in your capacity as an elected politician in anything you post, publish or share in either forum.
- 33** In making any decision on whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, could reasonably perceive you as having been acting as a councillor at the time of the alleged breach of the Code.

A councillor shared an antisemitic article on a Facebook page set up for his re-election campaign. The Panel accepted the councillor had not referred to himself as a councillor when sharing the article. The Panel nevertheless was of the view that, when considering the councillor's course of conduct, when sharing and encouraging others to read the article and subsequently defending it in the national press, it would have been reasonable for an informed member of the public to have perceived that he had been acting as such. This was because he was identified in press coverage of the matter as a councillor, had used council equipment to share the article and had sent an apology email about the article from his council email account. In addition, the councillor had continued to use the campaign Facebook page after being elected and the article purportedly concerned a local authority related issue.

A councillor was convicted of sexual assault in respect of an incident that occurred at a Trades Association event. The Panel was satisfied that it would have been reasonable for an informed member of the public to have perceived that the councillor was acting as a councillor at the event, given both the public nature of it and also because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel concluded that the Code applied.

A councillor sent and encouraged an employee of the Council with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Panel rejected arguments that the councillor had been acting in an entirely personal capacity. It found that the councillor could not completely separate himself from his role as an elected member of the Council in question, and that, when sending or encouraging the employee to send the messages during working hours, he was acting as an elected member.

Respect and Courtesy: Social Media

- 34** The rules of good conduct also apply when you are engaging in online activity, including when using social media. Social media is a term used to describe online technologies, platforms, applications and practices that are used to share information, knowledge or opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites.
- 35** The Standards Commission has produced an Advice Note for Councillors on the Use of Social Media. This can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

- 36** The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Before commenting or posting, you should consider very carefully whether:
- you understand the immediate and permanent nature of any comment or post you are about to make, and that you will have no control over the extent to which it is shared, and by whom;
 - you would make that comment or post in-person, face to face;
 - you have such conviction in what you are about to share that you would be prepared to justify it if challenged at a later date; and
 - you fully understand that even if you delete your post, it may have been captured by way of a screenshot or otherwise retained in some way (including being automatically cached online), and that fully deleting content once it has been shared online is almost impossible to achieve.
- 37** Other important factors to consider when using social media include whether:
- you are identifiable as a councillor by directly referring to yourself as such or indirectly by referring to the Council, or the functions of your role as a councillor, or through any information or images posted;
 - the account you are using is private and whether you have set your privacy controls accordingly. You should bear in mind that anyone who is able to view your social media content will be able to screenshot and publicly share it, if they choose to do so;
 - the number of ‘followers’ you have any and whether these individuals are following your account because you are a councillor;
 - you have complied with any policy your Council has produced on the use of social media;
 - information you are posting is confidential and you only have access to it because you are a councillor;
 - you are demonstrating bias or pre-determination;
 - you are using Council equipment and / or your Council’s information technology network or your own; and
 - you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions.
- 38** It can be very difficult to persuade people that you can take a different view, or even have an open mind, in your capacity as a councillor from any view you may have expressed in your personal capacity. This is particularly pertinent in respect of using social media, or commenting in the press, where the separation of public and private comments may be unclear to someone reading them, and where information about your status as an elected member may be readily available online or from different sources (including your council’s website).

For example, there could be a scenario in which an individual who is well-known as a councillor posted the following to their Facebook account: *“Personal comment – the council’s provost is corrupt and he’s had his hand in the coffers for years”*. Even though they have stated *“personal comment”* at the beginning of their post, it is likely that a member of the public reading the post would understand it to have been made by the individual in their capacity as a councillor, given the subject matter.

Another example could be where a councillor, who includes reference to their status as a councillor in their Twitter profile, retweets a post which contains a description of the service provided by their council as being substandard and unacceptably poor. While the post in question was not written by the councillor, the fact that they have chosen to retweet in circumstances where they are identifiable as a councillor, could be seen as being supportive of the criticism in their capacity as such.

A complaint alleged that a councillor had set up a Facebook account under a false name in order to post derogatory comments about employees of the council. The owner of the account was identified as the posts contained information about specific employees that could only be known by a councillor. It was therefore established that by posting the messages, the councillor in question had been acting in their capacity as a councillor, regardless of whether or not they had identified themselves as such. It was found that the councillor had breached the respect provisions of the Code.

Respect and Courtesy: Article 10 ECHR – Your Right to Freedom of Expression

- 39 As a councillor, you have an enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) when your comments are political in nature or concern matters of public interest.

You should note, however, that the protection Article 10 affords is not absolute and does not extend to, or excuse, hate speech or egregious offensive and abusive personal attacks.

Therefore, you may wish to think about:

- whether your comments are likely to bring your office or the local authority itself into disrepute;
- whether you are treating others with courtesy, respect and consideration;
- whether making your point in a respectful and constructive manner may have more of an impact in terms of influencing others;
- the fact that ‘liking’, re-posting and re-tweeting comments or posts, or publishing links to other sites are likely to be perceived as endorsing the original opinion, comment or information, including information on other sites;
- whether to allow disagreement on your social media pages;
- the fact that tone can be harder to convey online so consideration should be given to whether humour, irony and sarcasm will be perceived as such;
- whether you have to respond and / or if it is appropriate or helpful to do so;
- the stricter rules that apply to election publicity;
- whether anything you post could be considered obscene.

- 40 The Standards Commission has produced an Advice Note that outlines the approach it will take when issues that concern the application of Article 10 of the ECHR and the right to freedom of expression arise. It also suggests issues councillors should consider in order to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code. The Advice Note can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

Respect and Courtesy: Equalities

- 41 You are expected to advance equality of opportunity and to seek to foster good relations between different people. It is unacceptable for a public figure such as a councillor to express views that indicate a discriminatory attitude towards people on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity.

A complaint alleged that a councillor had shared, on Facebook and Twitter, a blog article which was critical of a union member who had organised an equal pay strike in Glasgow. The article contained references to “Mein Kampf” and of Hitler having accused “The Jew” of gradually assuming membership of the trade union movement. It was found that the article promoted negative stereotypes and was antisemitic in nature. The councillor was found to have breached the respect provisions of the Code.

A councillor referred to the complainer as a 'TERF' (Trans Exclusionary Radical Feminist) in a series of tweets and emails. The Panel found that while the term TERF was potentially controversial and could be seen as one of abuse, it could also be used or perceived as simply a descriptor. It was found, however, that it was evident from the Respondent's description, over an extended period of time, of TERFS as being "scum" and "hateful and vile", that the councillor intended it to be one of abuse. It was further found that the councillor had directed the term at the complainer as an individual and that it was about her as a person, rather than simply being a descriptor of her alleged views. As such, it was determined that the reference to the complainer as a TERF, in context, amounted to a personal attack on her and that the councillor had failed to behave in a respectful manner. It was further determined that the councillor had used a highly derogatory profanity about a member of the public in another tweet. It was found that using such a word in a public forum such as a tweet was highly offensive and inappropriate, regardless of whether it had been directed at any individual or identifiable group of individuals. The councillor was found to have breached the Code.

A complaint alleged that a councillor had posted a homophobic comment on the complainer's Facebook page and that he had accessed his account using a Council issued mobile phone when doing so. It was found that the comment made by the councillor had clearly been intended to insult and demean the complainer. The councillor was found to have breached the Code.

Respect and Courtesy: Bullying & Harassment

- 42 Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. It usually, but not always, arises as a result of an individual misusing their power.
- 43 Harassment is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. It can be experienced directly or indirectly (for example, being in the room which unacceptable conduct is being displayed and being affected by it).
- 44 It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident.
- 45 Even if the behaviour in question is unintentional, it can still be classed as bullying and / or harassment. It is the impact of the behaviour, not the intent, that is the key. You should therefore at all times be aware of the impact of your conduct on others, and remember that what may seem harmless to you can be offensive to someone else.
- 46 Bullying and harassment can occur through all means of conduct and communication – including social media posts, shares and comments. It can also arise through a lack of communication, such as the deliberate exclusion of an individual from a conversation, work or social activity.
- 47 You are responsible for your own behaviour. You must ensure that you are aware of, and comply with, the provisions concerning bullying and harassment in the Code and also any policy your Council has on ensuring dignity in the workplace.
- 48 The Standards Commission has produced an Advice Note for Councillors on Bullying and Harassment. The Advice Note is available on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

A complaint alleged that a councillor had behaved inappropriately towards two female fellow councillors and employees. It was established that the councillor had made unwarranted and inappropriate physical contact with the fellow councillors and employees at an official event and had also made remarks towards the employees which were patronising and demeaning. The councillor was found to be in breach of the Code.

A complaint alleged that a councillor had sent an email to a number of Council members and posted a Twitter message, describing an employee as “arrogant, lazy, mentally challenged” and as having been “useless for years”. The impact of the emails led the employee to seek medical and other support and resulted in him taking sickness absence due to stress. The Panel found the emails and tweet to be completely unwarranted and would have adversely affected the employee’s ability to carry out his role. The Panel found the councillor’s conduct amounted to a breach of the Code.

A complaint alleged that a councillor made a number of allegations and critical comments on his online blog about the complainer, who was a fellow councillor, which were of a personal and insulting nature. It was found that the comments had been made without factual basis, were disrespectful and were clearly intended to demean the complainer in a public forum. The councillor was found to have breached the Code.

A complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to a police officer, and also made a number of unfounded allegations about him during two telephone calls to a Police Station. It was found that the councillor had made the telephone calls in his capacity as a ward councillor and concluded that the provisions of the Code applied to him at the time of the events in question. It was further found that the comments made by the councillor in the telephone conversations amounted to an unacceptable personal attack on the police officer and that he had breached the respect provisions in the Code.

Respect and Courtesy: Council Employees

- 49 It is understood that in the political environment of local government there may be tensions between individual councillors and between party groups. Factors such as minority administrations, coalitions and multi-member wards may have a bearing on such tensions, but it is nevertheless essential to ensure that the interests of the electorate are represented as effectively as possible. This can only be achieved if councillors behave in a respectful way towards each other and towards Council’s employees.
- 50 The requirement to respect all Council employees includes employees of contractors providing services to the Council; employees of trusts or other arm’s length external organisations; and employees of any other organisations where it might be reasonably perceived that the Council (and by implication the councillor) has an influence over that organisation.
- 51 You have a right to ask Council employees for information. This does not mean, however, that you have a right to receive that information, or that you can demand such information be provided (see the guidance below on confidentiality and data protection). If you are asking employees for information, you are obliged to do so in a courteous and respectful manner.

A complaint alleged that a councillor had sent a series of emails (and made statements in council meetings) over a period of eleven months, to his fellow councillors and to senior council employees, alleging corruption in the allocation of a council property a family member of another councillor. The councillor in question had provided no proof to back up his claims of corruption. A number of internal council investigations, and finally an independent investigation carried out by Audit Scotland, had all concluded that there was no evidence to suggest any corruption in relation to the housing allocation. The Panel considered that by making such serious and unwarranted public accusations about the conduct of council employees, the councillor's conduct was offensive and fell well below the standard to be expected of a councillor, and therefore found that the Code had been breached. It is worth noting that in this case, due to the seriousness of the contravention and two previous breach findings against him, the councillor was disqualified.

Distinguishing between Strategic and Operational Matters

- 52 The Standards Commission has produced an Advice Note for councillors 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>. In general, if a duty is delegated to an employee, then it is likely to be operational in nature. You may wish to represent the views of your constituents on individual matters, such as a housing issue, but you should be aware that employees may feel pressured by a councillor challenging their actions or appearing critical of some aspect of their work. This is particularly the case with junior employees, who may not be used to dealing directly with councillors. Any concerns about performance should be raised in private with the employee's line manager.

Respect and Courtesy: Public Comment about Council Employees

- 53 As a councillor, you are entitled to scrutinise how effective the delivery of services has been. You should be careful, however, not to make public statements which expressly or by implication criticise the actions (or inaction) of an identifiable individual employee or group of employees (where individuals in that group are, or could be, identifiable). You should note that the concept of a public statement is wide and can cover a variety of scenarios such as the published minutes of a meeting, a comment on social media, or being overheard in a public area, such as a corridor or tearoom. Mutual respect and courtesy between councillors and those who work for, or on behalf of, your Council is essential as it helps ensure the efficient and effective running of local government.

For example, in a scenario where you are concerned about the quality of a report before you, you should consider how you raise your concerns. Saying *"I note this report does not contain a risk assessment – I would be grateful if a risk assessment could be undertaken"* would be respectful, whereas saying *"as usual, your report is inadequate and poorly prepared as it does not contain a risk assessment"* could be perceived as being personally critical of the report's author.

A complaint alleged that a councillor had become involved in a social care case on behalf of a constituent and had inappropriately sought to influence operational decision-making in respect of an offer of housing and child protection matters. While the Respondent's involvement may not have had any effect on the outcome of decisions, the Hearing Panel considered this had clearly been his intention. The Panel found that the inappropriate level of involvement, enquiries and correspondence from the Respondent could have had an adverse impact on resources, given that officers felt obliged to respond. The councillor had also been discourteous and disrespectful in certain correspondence with Council employees. He was found to have breached the Code.

A complaint alleged that a councillor engaged in public criticism of the Chief Executive of his Council by posting information and comments on the opposition councillors' Facebook page. The councillor did not give the Chief Executive an opportunity to respond before publishing the comments on the Facebook page. It was found that the councillor had breached the Code.

A councillor made comments in the press which were publicly critical of the capability of a newly-appointed Council employee. It was found that the councillor had been disrespectful to the new employee and had breached the Code.

Respect and Courtesy: Council and Committee Meetings

- 54** The words 'Chair' and 'Convener' in paragraph 3.11 of the Code, and the word 'Chair' in this Guidance, are not restricted to those specific terms and apply to any individual holding a similar chairing or convening role.
- 55** The role of the Chair in any Council meeting, including a committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of employees) can be expressed. At the same time, the Chair has a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the Council's Standing Orders. This includes determining the point at which conclusions should be reached. Chairs are required to adopt a balanced approach to help ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. As such, you should ensure you are familiar and comply with your Council's Standing Orders. The role of the Chair in reaching judgements about how the meeting is to be conducted should be supported and respected.

A complaint alleged that a councillor had failed to respect the Chair and other colleagues during a meeting of the Council. Despite the Chair determining that the matter under consideration had been agreed, the councillor continued to shout over the Chair, requiring her to adjourn the meeting. Upon reconvening, the councillor continued to speak and shout over the Chair. A motion was passed in terms of the Council's Standing Orders to suspend the councillor from the meeting. Despite this motion, the councillor initially refused to leave, and it took a further adjournment from the Chair to persuade the councillor to remove himself. The Panel held that the councillor had breached the Code.

- 56** You are accountable for your own conduct at all times in terms of the Code, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. During the course of a meeting, the Chair has the right to rule on and to take appropriate action as necessary, on the acceptability of conduct, and any language used and comments made. This can include requiring the withdrawal of a remark, asking for an apology, or any other action necessary to allow the meeting to proceed properly. Factors you should consider include whether:
- your behaviour, including your body language, is courteous and respectful (even when you hold a different view to that of other participants);
 - you are treating others with courtesy, respect and consideration;
 - your choice of language in meetings is appropriate and meets the high standards expected by the general public;

- it is appropriate to refer to other councillors by nicknames or to refer to them in the second person, by using terms such as ‘you’;
- newspapers, mobile phones, laptops and other devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying; and
- your conduct could diminish the public’s opinion of, and trust and confidence in, its elected representatives.

A complaint alleged that a councillor had been disrespectful during a meeting of the Council’s Regulation and Licensing Committee towards an applicant who was looking to renew his taxi licence. It was found that the councillor’s remarks and questions amounted to a personal attack and were not relevant or appropriate in the context of determining whether the applicant was a fit and proper person to hold the licence. He was found to have breached the Code.

A councillor said “sieg heil” when the Chair of a committee curtailed debate on a motion. It was found that the words “sieg heil” are synonymous with the former fascist Nazi regime in Germany and are directly associated with obedience to an oppressive dictatorship. As such, it was found that the councillor’s use of them could only be taken as an unacceptable way of protesting about how the Chair had conducted the meeting in respect of the item under consideration. Although the councillor had retracted the comment when asked to do so, it was found that he had breached the Code by failing to show respect to the Chair.

At a meeting of the Council, being a public forum, a councillor had accused a senior employee of collusion with the Council’s Administration and had challenged the employee’s integrity. The Panel found this behaviour particularly egregious given that the employee in question had no right of reply to the accusations. In addition, the accusations had not been raised previously with the employee or their line manager in private. The councillor was found to have breached the Code.

At a meeting of a Planning Committee a councillor made inappropriate comments about a planning application in that she made reference to “lining developers’ pockets”. While she had apologised unreservedly both publicly and privately, she was found to have breached the Code.

Remuneration, Allowances and Expenses

- 3.12** I will comply with the rules, and my council’s policies, on the payment of remuneration, allowances and expenses.

Gifts and Hospitality

- 3.13** I understand that I may be offered gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services (“gift or hospitality”) that may be reasonably regarded by a member of the public with knowledge of the relevant facts as placing me under an improper obligation or being capable of influencing my judgement.
- 3.14** I will never **ask for** or **seek** any gift or hospitality.

- 3.15 I will refuse any gift or hospitality, unless it is:
- a. a minor item or token of modest intrinsic value offered on an infrequent basis;
 - b. a civic gift being offered to the Council;
 - c. hospitality which would reasonably be associated with my duties as a councillor or as a member of an arm's length external organisation to which I have been appointed or nominated by my council ("ALEO"); or
 - d. hospitality which has been approved in advance by my council or the ALEO.
- 3.16 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.
- 3.17 I will not allow the promise of money or other financial advantage to induce me to act improperly in my role as a councillor. I accept that the money or advantage (including any gift or hospitality) does not have to be given to me directly. The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.
- 3.18 I will never accept any gift or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, my council.
- 3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to the Council at the earliest possible opportunity and ask for it to be registered.
- 3.20 I will promptly advise my council's Monitoring Officer if I am offered (but refuse) any gift or hospitality of any significant value and / or if I am offered any gift or hospitality from the same source on a repeated basis, so that my council can monitor this.
- 57 The Standards Commission has produced a separate Advice Note for councillors on Gifts and Hospitality which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 58 In your role as a councillor, you should never **ask for** or **seek** any gifts or hospitality. However, you will be **offered** gifts and hospitality: the Code makes it clear that the default position is you should refuse these, except in the very limited circumstances listed at paragraph 3.15 of the Code – see Notes 65 to 67 below for further information. It should be noted that acceptance can include accepting the *promise* of a gift or hospitality.
- 59 'Gifts' or 'hospitality' can come in many forms. Beyond the everyday things like bottles of wine or offers of lunch, they can include benefits such as tickets to sporting or other events; provision of services at a price below that generally charged to the public; incurring personal debts or obligations on your behalf, relief from indebtedness, loan concessions, or other financial inducements.
- 60 **Objective test:** you should always consider whether your acceptance of a gift or hospitality, in the limited circumstances permitted under paragraph 3.15 of the Code, would allow an informed member of the public to think it might lead to your being influenced in your judgement on matters. You should also always consider whether you would have been given the gift or hospitality if you were not a councillor. In doing so, you should think not just of your own perception, but the perception of others.
- 61 You should also not give or offer a gift or hospitality that is intended to induce someone, for example an employee or fellow councillor, to act improperly. You should note that in terms of the Bribery Act 2010, the following cases are offences:

Case 1 is where:

- a. P offers, promises or gives a financial or other advantage to another person, and
- b. intends the advantage
 - i. to induce a person to perform improperly a relevant function or activity, or
 - ii. to reward a person for the improper performance of such a function or activity.

Case 2 is where:

- a. P offers, promises or gives financial or other advantage to another person, and
- b. P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

- 62** An example of bribery might be where a windfarm operator promises to pay community benefit to an organisation in your ward, provided you grant planning permission in circumstances where it would not otherwise be awarded (i.e. if the proper statutory test of considering the provisions of the development plan and all material planning considerations was not applied or if community benefit was wrongly taken into account in determining a planning application).
- 63** You should, therefore, be aware that irrespective of any of the provisions in the Code, a gift which induces an individual to improperly undertake a statutory duty, such as granting planning permission, is still likely to fall foul of the provisions of the Bribery Act 2010. This is regardless of whether the gift is given directly to the individual, or to someone else. Such an action could result in a criminal prosecution.
- 64** Paragraph 3.18 of the Code makes it clear that where an individual or organisation is awaiting a decision from, or seeking to do business with, the Council, you should not accept any form of gift or hospitality from them, no matter how small in nature or value. This is irrespective of whether you sit on a Committee with an influence on the outcome of such matters, as there could still be a perception that you might be in a position to influence colleagues making the decision one way or another. As you have a personal responsibility to comply with the Code, the onus is on you to ascertain whether the individual or organisation offering you gifts and / or hospitality is awaiting a decision from, or seeking to do business with, the Council.

Limited circumstances in which gifts and hospitality may be accepted

- 65** Provided Paragraph 3.18 of the Code does not apply, paragraph 3.15 sets out the very limited circumstances in which you might accept a gift or hospitality from another person in your role as a councillor. These would be things such as a pen, or a notepad, or hospitality such as tea or coffee at a local event, or a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference.
- 66** Similarly, where you are representing the Council in a civic role, you will be expected to accept hospitality normally associated with that role, for example, a dinner to commemorate the anniversary of an event. If you are invited to such events as a result of your civic role, you can accept the invitation.
- 67** Paragraph 3.19 of the Code also recognises that there may be situations where, as a councillor, and in particular if you hold a role as a civic leader of your Council (Convener, Provost, and / or their deputies) you may be expected to accept gifts on the Council's behalf. These could be, for example, from representatives of a twin town or another organisation visiting your area. In those circumstances, if it would cause embarrassment or offence to refuse the gift, you can accept it. You should, however, pass the gift to the appropriate Council employee at the earliest opportunity.

Perception and Influence

- 68** The provisions in the Code on gifts and hospitality are designed to avoid any perception that councillors may be using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest (for example, by serious organised crime gangs seeking to obtain contracts and licences to facilitate money laundering).
- 69** The requirement for councillors to advise their Council's Monitoring Officer of any offers of any gifts or hospitality from the same source on a repeated basis is important as it ensures the Council can take action if it appears the same individual or organisation is attempting to influence its elected members and decision-making. It is also open to you, in the interests of transparency, to declare any gifts and hospitality you have declined.

A complaint alleged that a councillor had failed to declare hospitality received during a site visit from a recipient of planning permission who was to make further applications for the same development. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or further hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, following a Council request. This was not regarded as inappropriate for the purposes of the Code.

A complaint alleged that a councillor failed to declare hospitality received from a company that was involved in a tender application to provide waste disposal services to the Council. The hospitality involved a trip to watch the Scottish Cup Final at Hampden. It could not be said that the hospitality in question was minor, or that it would reasonably be associated with the councillor's day to day duties. The Panel held that whether or not the hospitality had indeed influenced the councillor's judgement in respect of the company's tender application, there was a reasonable perception that the hospitality could have influenced the councillor in such a way. The councillor was found to have breached the Code.

Confidentiality

- 3.21** I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.
- 3.22** I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.
- 3.23** I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available).
- 70** You have a statutory right, subject to certain statutory exemptions (including those covered by data protection legislation), to Council information under the Access to Information provisions of the Local Government (Scotland) Act 1973 and the Freedom of Information (Scotland) Act 2002. You also have a right to request information where you can show a need to know that information in order to perform your duties as a councillor.

- 71** It is legitimate, however, for your Council to require you to treat certain documents and information, provided to you in your capacity as a councillor, as confidential. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing, reputation and integrity of a Council, it is essential that you respect the provisions at paragraphs 3.21 to 3.23 of the Code.
- 72** Information can become confidential in a number of ways, including in terms of the following examples:
- a Council employee, or a member of the public, has asked you to treat it as confidential;
 - the Council has resolved to treat it as exempt information in terms of the Access to Information provisions of the Local Government (Scotland) Act 1973, or is likely to do so;
 - information which, under the data protection legislation or the General Data Protection Regulation contains personal data, the release of which would lead to a breach under those provisions.
- 73** Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear, from the nature of the information or from the circumstances in which it was provided to you, that it is confidential. This may include the following types of information:
- commercial information, such as information relating to a contract or a contractor's business;
 - personal or sensitive information, such as information relating to an individual's employment or health;
 - information which is confidential as a result of a statutory provision;
 - information discussed in closed or private sections of meetings;
 - legal advice obtained by the Council (either provided by employees or external legal advisers). This will be covered by legal privilege and should not be disclosed without the Council's permission;
 - information received as a result of a relationship where there is an expectation of confidence, such as between a councillor and a constituent; and
 - information about any ongoing investigation being undertaken by the Ethical Standards Commissioner.

A councillor, during a meeting discussing the appointment of new members to a Council committee, objected to the appointment of one of the proposed members on the grounds that a complaint against them was currently being investigated by the Ethical Standards Commissioner. The Ethical Standards in Public Life etc. (Scotland) Act 2000 provides that ongoing investigations should be conducted confidentially. The Panel found that the councillor was aware, or should have been aware, of that provision. By disclosing publicly the fact that their fellow councillor was under investigation, the councillor was found to have breached the Code.

- 74** As a councillor, you are a data user and must comply with data protection legislation and your Council's data protection policies when handling information. Council information provided to you must only be used by you for the purpose for which it was provided.
- 75** You should be aware that a breach of confidentiality could result in you being personally liable under data protection legislation. This may result in a potential criminal prosecution, civil liability for damages and / or a fine being imposed by the Information Commissioner, in addition to any reputational damage being incurred by you and / or the Council.
- 76** Confidential information must not be disclosed or in any way used for personal or party-political advantage or in such a way as to discredit the Council. This applies even in circumstances where you hold the personal view that such information should be publicly available.

- 77** You must not provide the media with ‘off the record’ briefings on the general contents or ‘line’ of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the Council and its committees.
- 78** Sometimes confidentiality is a matter of timing, in that information may be released into the public domain at a later stage (either in the short or long term). However, you must respect the requirement for confidentiality even if you do not agree with it or consider that the information should be released at an earlier stage.
- 79** You should seek advice if you are in any doubt as to whether any documents, information or advice are confidential, particularly if you are intending to disclose these to any outside body or individual.
- 80** As a councillor, you are in a position of trust and members of the public (particularly constituents) may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish, at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.
- 81** If you are considering disclosing any information which could reasonably be regarded as being confidential, you should always obtain confirmation (preferably in writing) that you have the authority to do so. However, you must be aware that the person who holds the information may not necessarily have the authority to permit any such disclosure. For example, another councillor may have passed on information to you. The fact that this information has been passed to you by another councillor does not mean that the information in question is not confidential, or that the councillor in question has the authority to permit you to disclose it further.
- 82** You should be aware of the provisions of data protection legislation. If you hold personal information (such as details of constituent enquiries, constituents’ personal details or other information such as medical conditions), you are required to be registered as a data controller under data protection legislation. You must abide by the following rules when holding and processing personal data:
- you must only use the information for the purposes for which it was given;
 - you must not share such information with anyone without the consent of the person giving the information, or unless required to do so by law. You should note, however, that you do not need a constituent’s consent to share information with Council employees for the purpose of assisting with the resolution of an enquiry or complaint, provided you do not use the constituent’s personal data in a way that goes beyond their reasonable expectations in contacting you (unless you are required to do so by law); and
 - you should not keep the information any longer than you need to.

A complaint alleged that a councillor disclosed confidential information relating to the health of a Council employee to a third party. It was found that the councillor had breached the Code by disclosing to a third-party information about the employee which was private, personal and sensitive and that was, by its very nature, confidential.

A complaint alleged that a councillor disclosed, in two Facebook posts, sensitive information about his Council’s response to the Covid-19 pandemic. The information in question had been provided by council employees at private briefings. The Panel, having heard from a number of witnesses, including other councillors, was satisfied that it was evident the information was intended to remain confidential until the Council had prepared its public communications. This was especially important given the nature of the communications, which could have caused undue fear or alarm. The Panel concluded, therefore, that the councillor had breached the confidentiality provisions of the Code.

A councillor who sat on his Council's adoption panel disclosed details of a person who had applied to the panel to adopt a child. The councillor could only have become aware of the information he disclosed as a result of his membership of the adoption panel. The Panel concluded that the councillor had breached the Code by disclosing the confidential information.

Use of Council Resources

3.24 I will only use council resources, including employee assistance, facilities, stationery and IT equipment, for carrying out council duties in accordance with all my council's relevant policies.

3.25 I will not use, or in any way enable others to use, council resources:

- a. imprudently (without thinking about the implications or consequences);
- b. unlawfully;
- c. for any party political or campaigning activities or matters relating to these; or
- d. improperly.

83 As a general rule, facilities paid for by the public purse, and provided for use in Council business, should only be used for Council business unless otherwise expressly permitted by the Council itself. It is recognised, however, that some Councils may allow councillors occasional personal use of Council-provided equipment, such as laptops, mobile telephones and tablets. It is likely that your Council will have policies and protocols on related matters, including on the use of IT and other equipment for personal and official purposes, and on employee support for councillors. The Code obliges you to adhere to such policies and protocols and, therefore, you should familiarise yourself with their contents.

84 The Code now explicitly forbids the 'imprudent' (i.e. without thinking about the implications or consequences) use of Council facilities. Given the importance of achieving best value, it is important that councillors are not seen to be using facilities irresponsibly or wastefully. An example of this would be printing documents unnecessarily.

85 Facilities must never be used for party-political or campaigning purposes. You are reminded of the relevant provisions of Section 2 of the Local Government Act 1986, which are as follows:

2. Prohibition of Political Publicity

(1) A local authority shall not publish, or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters:

- a. *whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;*
- b. *where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.'*

3. A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves.

- 86** While restrictions on party-political use of facilities are particularly in focus during election campaigns, they apply at all times. Councils and councillors should also take into account and adhere to the terms of the Code of Recommended Practice on Local Authority Publicity issued in terms of Section 4 of the Local Government Act 1986.
- 87** The provisions under paragraphs 3.24 to 3.25 of the Code apply at all times and not just when you are acting as a councillor. Other factors to consider include:
- whether you are either explicitly or impliedly allowing others to use Council facilities improperly;
 - how the resource you are using is funded (for example, who pays for any transport or administrative support); and
 - whether the resource is being used solely for you to carry out official Council business or for an activity which has expressly been authorised by the Council, or whether you are using it for something else as well.

A complaint alleged that a councillor had used Council facilities to send an email in relation to an application for planning permission submitted by his own company. He was found to have breached the provision in the Code concerning the improper use of Council facilities.

A complaint alleged that a councillor used his Council email account and computer to send an email asking for help to deliver party-political campaign leaflets. It was found that the councillor had breached the provisions in the Code prohibiting the use of Council facilities for party-political or campaigning purposes.

Dealings with my Council and Preferential Treatment

- 3.26** I will not use, or attempt to use, my position or influence as a councillor to:
- improperly confer on or secure for myself, or others, an advantage;
 - avoid a disadvantage for myself, or create a disadvantage for others; or
 - improperly seek preferential treatment or access for myself or others.
- 3.27** I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.
- 3.28** I will advise employees of any connection, as defined at Section 5, I may have to a matter, when seeking information or advice or responding to a request for information or advice from them.
- 3.29** I will not participate in certain decisions concerning Council Tax if I am in arrears of two months or more in respect of the payment of Council Tax.
- 88** As a councillor, you must avoid conduct which seeks to further your own personal interests, or the interests of others you are connected to. You must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment is being sought. You should note that *seeking* preferential treatment can be a breach of the Code, regardless of whether any action is taken as a result. Factors to consider include whether you are asking employees to act in a way:
- that suggests you are seeking preferential treatment for yourself or others; and
 - that would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party-political purposes.

- 89** Paragraphs 3.26 to 3.28 of the Code are designed to ensure there is transparency in your dealings with employees of the Council. There is an onus on you to advise employees of any connection you may have to a matter when seeking advice, assistance or information whether within or outwith a formal meeting of the Council or its committees. This applies equally in circumstances where employees are seeking advice, assistance or information from you.
- 90** You should not assume that employees will be aware, or will remember, any personal interest you have in a matter, when you are seeking their advice, assistance or information. It is important that you identify any connection as it may be that it is inappropriate for the employee to provide you with advice, assistance or information on the matter, if your connection is one that could amount to declarable interest. For more information on what is meant by 'connection' and a 'declarable interest' in this paragraph, see the further guidance provided under Section 5 (Declaration of Interests).
- 91** Section 112 of the Local Government Finance Act 1992 provides that, if you are in arrears of two months or more of Council tax or three months of community charge, you cannot vote on certain matters relating to Council tax, including the setting of Council tax. In such circumstances, you would be required to disclose that this legislation applies to you in any meeting where such matters are being considered, and you would not be allowed to vote. It is a breach of the Code to do so, and may also constitute a criminal offence. If you are in any doubt as to whether this section applies to you, you should seek the advice of the Monitoring Officer.

A complaint alleged that a councillor sought preferential treatment when contacting employees about a planning application his neighbour had submitted and, in particular, had sought information which would not normally be available to members of the public. The councillor had also sought to exert influence in asking that the matter be dealt with urgently. It was found that his actions amounted to attempts to seek preferential treatment in breach of the Code.

A firm, in which a councillor was a partner, submitted a planning application for a wind turbine. The Panel heard that the councillor sent two emails from his council email address, signed off by him as a councillor, to members of the planning committee that was due to consider the application. In his emails, the councillor outlined a number of points in favour of the planning application. The Panel determined that members of the public would reasonably conclude that, by sending the emails from his council email address and signing them off as a councillor, he was using his position as a councillor to seek preferential treatment. The councillor was found to have breached the Code.

Appointments to Outside Organisations

- 3.30** If I am appointed or nominated by the Council as a member of another body or organisation, I will abide by the rules of conduct and will act in the best interests of that body or organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of that body or organisation.
- 3.31** I accept that if I am a director or trustee (or equivalent) of a company or a charity, as a nominee of my Council, I will be responsible for identifying, and taking advice on, any conflicts of interest that may arise between the company or charity and my council.

- 92 Authorities will frequently appoint or nominate councillors to outside bodies. If you are appointed or nominated to an outside body, you are still bound by the Code, but you will also have responsibilities as a member of the outside body. These responsibilities may potentially include personal liabilities and could also give rise to conflicts of interest. Such conflicts may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Councils will therefore need to consider this issue carefully when appointing councillors to outside bodies. You need to consider carefully whether you can accept such appointments in each case. The Standards Commission has produced an Advice Note for Councillors appointed to Arm's Length External Organisations (ALEOs) which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

A complaint alleged that the councillor had disclosed confidential information on the re-opening of recycling centres following the first Covid-19 lockdown. The councillor disclosed information that had been discussed at a special meeting of an ALEO established to provide recycling and waste disposal services on behalf of the Council, firstly in a press release by his party, and later on Facebook. This disclosure occurred despite the councillor knowing that the information was to remain confidential until the Council had agreed the proposals, put the necessary arrangements in place and managed its communication strategy. The Panel considered the requirement for councillors to abide by the rules of conduct of any partner organisations they are appointed to as an important requirement of the Code. The Panel concluded that the councillor, by disclosing the information in question, had failed to act in the best interests of the ALEO, and therefore had breached the Code.

- 93 You should be aware that you may need to register, in terms of Section 4 of the Code, your membership of another body. That membership could also amount to an interest that would need to be declared in terms of Section 5. However, membership of statutory joint boards or joint committees composed exclusively of councillors does not require to be registered or declared as an interest.
- 94 If you are appointed or nominated by the Council to an outside body, as a director or a trustee, you will assume legal responsibilities as an individual. These legal responsibilities, as a director of a company, arise by virtue of the Companies Acts, and / or as a charity director or trustee by virtue of the Charities and Trustee Investment (Scotland) Act 2005 (if the outside body is a registered charity). The Office of the Scottish Charity Regulator has up to date guidance on the latter scenario at: <https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/>. If appointed or nominated to an outside body, you should ensure that you are clear about the role and the responsibilities you will have to it as an individual. You will also have to act in the outside body's best interests and, as a member, will be bound by the provisions in any code of conduct it has adopted, when acting as such.
- 95 If you have any doubts about your responsibilities or concerns about the impact of an appointment to an outside body on your ability to adhere to the Councillors' Code, you should seek advice before accepting such an appointment or before any meeting at which appointments are to be made. Advice can be sought from Council employees or, if appropriate, from employees of the outside body.