

SECTION 5 OF THE COUNCILLORS' CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 5 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 5 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 5: DECLARATION OF INTERESTS

- 129** The requirement for councillors 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 councillor's role and denies members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.
- 130** Should you be in any doubt about the implications of your participation in a Council discussion or decision, you should seek advice from your Council's Monitoring Officer before taking part.

Stage 1: Connection

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

- 131** In your work as a councillor, 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 Council is considering, in some way.

- 132** 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 councillor 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 Council's Monitoring Officer.

- 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.

- 133** 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.

- 134** It is impossible to list every type of connection you could possibly have with a matter involving or to be considered by the Council. However, some common examples would include:
- owning a property that is potentially affected by Council proposals (such as demolition or compulsory purchase), or might be affected by proposals by others (such as an application for a licence or consent);
 - the Council considering some form of financial assistance that could have a direct effect on an organisation you, your partner, or someone close to you works for;
 - your membership of a club or society that is applying for a grant or some form of licence or consent from the Council;
 - some form of personal connection with a person making an application, or a complaint, to the Council, which goes beyond the usual relationship that a councillor would have with a constituent.
- 135** 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.

5.3 A connection includes anything that I have registered as an interest.

136 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:

- a) being a Council Tax or rate payer or a council house tenant or in general when services delivered to members of the public are being considered, including the setting of budgets, taxes and rates and fixing of council house rents;
- b) being a councillor when councillors' remuneration, allowances, expenses, support services or pensions are being considered; or
- c) being a member of an outside body to which I have been appointed or nominated by my council as a councillor representative unless:
 - (1) the matter being considered by my council is quasi-judicial or regulatory; or
 - (2) I have a personal conflict by reason of my actions, my connections or my legal obligations.

137 Paragraph 5.4 of the Code outlines matters that are not considered a connection for the purpose of the Code. This includes simply having previous knowledge or experience of a matter.

138 Though being a Council tax payer does not need to be considered a connection when the Council tax is being set, s.112 of the Local Government Finance Act 1992 requires you to disclose at the council tax setting meeting if you are in arrears of two months or more of Council tax or three months in the case of community charge. If so, you are not entitled to vote on the matter.

139 Similarly, while being a Council house tenant is not automatically a connection, there are circumstances where the law prevents you from voting on Council house matters in your ward. Specifically, s.20(3) of the Housing (Scotland) Act 1987 provides:

A member of a local authority shall be excluded from a decision on the allocation of local authority housing, or of housing in respect of which the local authority may nominate the tenant, where:

- a. the house in question is situated; or*
- b. the applicant for the house in question resides, in the electoral division or ward for which that member is elected.*

140 If you are in any doubt about whether you can take part in such a decision, you should seek advice. You should be aware that even if you are not prevented from taking part under any legislation, you will still have to consider whether you have a connection that amounts to an interest under the Code (having applied the objective test). If so, you will have to declare the interest and leave the room. An example might be if the house in question is not situated in your ward and the applicant does not reside there, but they are nevertheless a close friend or relative.

141 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.

142 As stated at paragraph 5.4(c) of the Code, membership of an outside body you have been appointed to by the Council, as its representative, would not normally be a connection. Such outside bodies can include statutory bodies (such as regional transport partnerships and health and social care integration joint boards), joint committees (such as city region deals and Scotland Excel), ALEOs and voluntary organisations.

143 However, as stated at paragraph 5.4(c)(1), this does not apply where the matter being discussed by the Council, or at one of its committees or sub-committees you are a member of, is:

- quasi-judicial or regulatory in nature; and
- where the outside body has an involvement.

Examples of the types of matters which involve quasi-judicial or regulatory decisions are outlined in Section 7 of the Code (Taking Decisions on Quasi-Judicial or Regulatory Applications), and include planning and licensing applications.

144 An example of where you would have a declarable interest arising from your membership of an outside body would be where, as a member of your Council's licensing committee, you are to consider an application made by the outside body. A further example would be where, as a member of your Council's planning committee, you are to consider a planning application where the outside body is an objector. The requirement for you to declare your interest as a member of the outside body in these situations would apply regardless of whether or not you actively participated in the decision by the other body to make the application or objection.

145 You should note that you can take part in any Council discussions and decision-making on finance and funding matters relating to any outside body or ALEO, even if you are appointed or nominated to that outside body or ALEO by your Council. However, you should be aware that, you may still have a personal conflict by reason of one or more of the examples outlined under paragraph 5.4(c)(2) of the Code. This means that if you are appointed to an ALEO, and take part in decision-making by that ALEO to request further funding from the Council, you would generally not be prevented from subsequently taking part at a Council meeting in the decision-making on the request, provided you do not have an additional personal conflict in terms of paragraph 5.4(c)(2).

146 An example of where you have a personal conflict, and therefore a declarable interest, **by reason of your actions** could be where you have categorically and publicly stated, at a stakeholder event run by an outside body of which you are a member, that the body is exceeding all its targets and functioning successfully, but where you are then asked to scrutinise that body's performance at a Council committee meeting.

147 An example of where you have a personal conflict **by way of a connection** (other than solely from your membership of the outside body or ALEO) would be where your partner works for the outside body, and the body is seeking a package of funding from the Council 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 councillor. For example, as a councillor you may consider it is in the Council's best interests to wind up an ALEO. If, however, you were also a director of the ALEO, you would be required to act in its best interests, which may be to continue with the business. If you are in doubt as to what your legal obligations are to the outside body, you should seek advice from its legal advisers.

- 149** A further example would be where you are a member of a pension fund committee. If, for example, your Council was to consider a motion to request or direct that the pension fund committee should take a certain action (investment or otherwise) then it is likely that this will give rise to a declarable interest resulting from your personal obligations as a member of that committee (regardless of whether such a direction would be competent or could be implemented). This is because duties of pension funds are fiduciary in nature and accordingly, individual members of a pension committee, in making decisions, must have regard to the parties to whom a duty is owed (being both the scheme employers and scheme members) and any decisions must also accord with investment regulations. In such an example, you would be required to consider whether you had a declarable interest that would prevent you from taking part, at the Council meeting, in the discussion and any decision-making on the motion to be considered.
- 150** Having a view in advance on a matter to be considered at a Council meeting (and discussing such a view with colleagues or constituents) would not in itself create a personal conflict that could be said to arise by way of your actions (provided the matter is not quasi-judicial or regulatory in nature). You are entitled to express views and opinions, and doing so before a meeting to discuss matters that are not quasi-judicial or regulatory in nature does not, by itself, create a declarable interest.

A complaint alleged that a councillor had breached the Code by failing to declare an interest when taking part in a committee decision on changes to a community council boundary. The complaint was that the councillor had done so, despite having sent private messages, which then entered the public domain, to friends and family before the meeting encouraging them to vote against the proposal to amend the boundary. The Hearing Panel noted, however, that the expressing of an opinion privately, on a council policy, to friends and family would not amount to having an interest that arose by way of the councillor's actions. This was because the matter before the committee (i.e. the boundary change) was not quasi-judicial or regulatory in nature. The Panel noted that councillors were entitled to have, and to publicly express, views and opinions on policy matters and matters of local interest (and that they are often elected because they have expressed such views). The Panel confirmed that the Code does not prevent councillors from discussing or debating matters of policy or strategy.

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.
- 151** 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.
- 152** 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 councillor. If the answer is yes, the connection is an interest which you should declare.
- 153** 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.

- 154 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 supermarket you regularly use is engaged in a property transaction with the Council, or when a neighbour you have little social contact with works for a company receiving financial assistance from the Council.
- 155 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.
- 156 When making a declaration of interest you only need to 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.
- 157 You must disclose or declare your personal interests both in formal and informal dealings with Council employees and other councillors, not just in formal Council or committee meetings. This is an important consideration, especially when you are seeking advice or assistance from Council employees or other sources. You should not assume that employees and others will know or will remember what your interests are.
- 158 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 councillor who had been appointed to represent the Council on a stakeholder group had participated in a discussion regarding a review of child health and medical services in the Council area at a meeting of the stakeholder group. This was despite being aware that his employer, who was a Member of the Scottish Parliament, had an interest in retaining certain services under consideration. The employer had previously raised the issue in the Scottish Parliament and had made public statements in the press. The councillor had failed to apply the objective test as, had he done so, he would have realised that in raising issues and concerns that were similar to those raised by his employer, a member of the public might have perceived him as being influenced by his employer. It was determined in the circumstances that the nature of the employee / employer relationship could not reasonably be considered to be remote or insignificant. The councillor was found to have breached the Code.

A complaint alleged that a councillor had failed to register her non-financial interest as a member of a local Steering Group set up in support of a Business Improvement District (BID). The BID process was a matter of public interest due to the use of public funds and the public ballot of the business community. It was found that the councillor was a member of the Steering Group prior to, during and after a ballot on the establishment of the BID. As such, members of the public might reasonably have considered that her interest in the Steering Group could influence her actions, speeches or votes in the Council in respect of the BID and, therefore, her interest should have been registered. The councillor was found to have breached the Code.

A complaint alleged that a councillor had not declared any interest at three meetings of a policy and scrutiny panel of the Council, during which reports were presented about the Council's contribution towards the funding of voluntary organisations, including her employer. This was despite her employer having been mentioned specifically in reports considered at the meetings in question. It was found that the councillor should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meetings. She was found to have breached the Code.

A complaint alleged that a councillor failed to declare an interest in a planning application at a meeting of the Council's Planning Board despite having a close and long-standing friendship with the family who were seeking the planning consent. While the Panel recognised that there was no potential for personal gain by the councillor, he was nevertheless found to have breached the Code. This was because the Panel was satisfied that a member of the public, knowing that the councillor was close friends with the family who had a financial interest in the planning application, would reasonably regard the interest as sufficiently significant as to be likely to prejudice his decision-making. The councillor was found to have breached the Code.

A complaint alleged that a councillor had failed to declare his non-financial interests and the non-financial interest of close relatives in relation to involvement with a school lobbying group after a planning application to build a new school had been submitted and the formal planning process was underway. The councillor had incorrectly assumed that employees were fully aware of his interests, and also the interests of his family in the lobbying group. It was noted that councillors should ensure that all the relevant information is provided to employees when advice is sought, so that councillors can be assured that any advice given to them by employees is fully informed and comprehensive. The councillor was found to have breached the Code.

A complaint alleged that a councillor had failed to declare an interest at a meeting at which a planning application for a wind farm on land adjacent to a farm owned by her was being considered. In return for payment, the councillor had granted a right of access over her land to allow entry to the proposed wind farm. The councillor relied on an argument that a confidentiality clause contained in the access agreement had prevented her from declaring her interest. The Panel rejected that argument as irrelevant, and the councillor was found to have breached the Code.

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.

- 159** 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.
- 160** 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 to any 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.

- 161 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 councillor colleagues remotely (for example by email or text) while they are considering the item.

A councillor, who was also a member of a planning committee involved in determining a planning application, made a declaration of interest stating that their partner was a shareholder in the company applying for the planning permission in question. The councillor'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 councillor simply switched off their camera, meaning they were still able to see and hear the proceedings. The councillor then sent WhatsApp messages to their colleagues on the committee, urging them to approve the application. The Panel found that the councillor had breached the Code.

- 162 Where the only interest is in relation to an item included in an agenda which is being laid before the committee, or the Council, 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.

- 163 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 Councillors on How to Declare Interests, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

- 164 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: *"Councillor A declared an interest in relation to the planning decision at Agenda Item 16 as she owns a property on the same street. Councillor 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.

- 165 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.

- 166 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.

- 167** The Standards Commission can consider requests for dispensations in certain circumstances, either from a councillor as an individual or to a class or description of councillors who are affected by a particular category of interest.
- 168** 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.
- 169** 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 try to respond before the meeting at which the business is to be considered. 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.
- 170** If a dispensation is granted, you should consider stating this at the meeting, and asking for this to be recorded in the minutes.