

SECTION 6 OF THE COUNCILLORS' CODE OF CONDUCT: CODE AND GUIDANCE

This document contains Section 6 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 6 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 6: LOBBYING AND ACCESS

6.1 I understand that a wide range of people will seek access to me as a councillor and will try to lobby me, including individuals, organisations, companies and developers. I must distinguish between:

- a. my representative role in dealing with constituent enquiries;
- b. any community engagement where I am working with individuals and organisations to encourage their participation and involvement; and
- c. lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my council (for example contracts/procurement) or who are applying for a consent from my council.

Constituent enquiries

6.2 I will comply with data protection legislation, which includes keeping the personal information of any constituent secure and only, in general, using it for the purpose of assisting with the enquiry. I will seek the constituent's consent in advance if I am in a multi-member ward and feel it is more appropriate for another councillor to handle the enquiry. I note that there may be circumstances in which it is best not to respond to a constituent, and that I am not obliged by the Code to respond to every contact.

Community engagement

6.3 I will undertake such work in an open and transparent manner. I will not express an opinion on a quasi-judicial or regulatory application that I might later be asked to determine. I accept that if I do express such an opinion, I will have to declare an interest and will not be able to take part in the decision-making.

Lobbying

6.4 In deciding whether, and if so how, to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to influence my, or my council's, decisions.

Lobbying in Quasi-judicial or Regulatory Matters

6.5 If I am approached directly by an individual or organisation who is seeking to do business with my council or who is involved in a quasi-judicial or regulatory matter (such as an applicant or an objector),

I WILL:

- a. have regard to Section 7 of this Code;
- b. advise that individual or organisation that I cannot formulate an opinion or support their position if I am going to take part in the decision-making on the matter; and
- c. direct any representations I receive to the appropriate council employee or department.

I WILL NOT:

- d. lobby or otherwise exert pressure or influence on employees, other councillors, or members of a quasi-judicial or regulatory committee, to recommend or make a specific decision in respect of a quasi-judicial or regulatory matter. I understand that I am entitled to seek information from employees but that I must not lobby them, to either make or recommend a particular decision.
- e. use political group meetings to decide how I and other councillors should vote on such matters or on individual staffing issues, such as the appointment or discipline of an employee.
- f. comply with political group decisions on such matters if these differ from my own views.

- 171** As a councillor, you will be approached by those wishing to make their views known. This is perfectly legitimate and should be encouraged, as the ability to approach and lobby a council or councillor is an essential part of the democratic process.
- 172** Paragraph 6.1 of the Code sets out some of the ways in which you, as a councillor, may be lobbied. For example, you may be lobbied by a constituent on a personal issue, such as a housing matter. You may become involved in a particular local issue as part of your role and responsibility to promote community engagement and build capacity. You may be approached by someone seeking financial or other benefit from the Council, either by way of a contract for goods or services, or some form of licence or consent.
- 173** It is easy for the lines between these different types of approach to become blurred, particularly when you are dealing with quasi-judicial and regulatory matters, such as planning or licensing. It is important to recognise, however, that the integrity and reputation of the Council's decision-making process depends on openness, transparency and following proper process. There is a risk that private meetings with lobbyists, particularly those that fall outwith Council procedures and where employees are not involved, will undermine or could reasonably be perceived as undermining this.
- 174** Lobbyists can expect to deal with Council employees at certain stages of an application process. If you are seen as facilitating an approach outwith the normal process, there may be a perception that you have allowed the lobbyist special access to the decision-maker and that you are bypassing employees. As such, if you are approached by anyone about a pending decision of any kind, you should advise the employees who are dealing with the matter and give them all relevant information.
- 175** Discussing the information you have received from lobbyists with employees will give you an opportunity to establish if it is something they are aware of and / or if it is relevant to any decision you will be making. It may be that lobbyists will present information in a way that is favourable to their case, but which does not give the complete picture. Employees can give you professional advice on what may or may not be a relevant consideration in respect of any decision you will be making.
- 176** Even if you do not sit on the regulatory committee that is taking the relevant decision, there are still likely to be issues under the Code that you will need to consider. In particular, it would be a breach of the Code for you to lobby employees or members of the regulatory committee either on your own behalf, or on behalf of others.

Constituent Enquiries

- 177** Dealing with constituent enquiries is a key part of your role, and helps ensure the Council is open, accessible and responsive to the needs of the public. When you respond, you should be mindful of the need to treat everyone with respect, and to otherwise promote the key principles outlined in Section 2 of the Code. In some cases, however, you may feel that there is nothing further to be gained by responding to a constituent and that you are not able to help them further. In those circumstances, you should politely inform the constituent that is the case.
- 178** You are entitled to raise a constituent's enquiry with the relevant employee, although you should, at all times, follow the Council's policies on the processing of personal data. You can ask questions about how a service has been delivered, and can seek information on progress on behalf of a constituent, but you should be careful not to stray into operational management (for more advice on this, please see the Standards Commission's Advice Note for 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>).
- 179** You should be aware of the distinction between a constituent's request for service (or for information about a service), and a complaint about a service received. In the latter case, you should recommend that the constituent makes use of the Council's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the Scottish Public Services Ombudsman, if necessary and as appropriate.
- 180** Inevitably there will be occasions where the constituent looking for your help is also a Council employee. While they are entitled to do so as a private individual in the same way as any other constituent, you should decline to get involved in anything which relates to their status as an employee (such as performance or attendance management). You are a member of the organisation that employs them, and employment matters should be handled by their line manager or their union representative, as appropriate. You should also be mindful of the terms of Appendix A to the Code, which deals with the relationship between Council employees and councillors.

Community Engagement

- 181** Community engagement is a key part of your role, as it helps to:

- identify a community's needs;
- determine Council priorities;
- contribute to more informed decisions; and
- help community empowerment and capacity building.

You should note, however, that there is a distinction between community engagement and a single-issue campaign about a regulatory decision.

Lobbying

- 182** Private meetings with lobbyists – whether professional lobbyists or members of the public seeking your support – can undermine public trust in decision-making processes. It can also have consequences for the lobbyist. For example, a private meeting could disqualify them from the tender process if they are bidding for a Council contract. Private meetings can also involve offers of hospitality, which could lead to a breach of the gift and hospitality provisions at paragraphs 3.13 to 3.20 of the Code.
- 183** If you are approached by a lobbyist, it is likely that they are seeking your involvement as someone in a position of influence, whether as part of the decision-making committee or otherwise. It is important to recognise that there is a difference between lobbying on behalf of a commercial or personal interest, and lobbying for a policy change or benefit which affects a group of people, a community, or an organisational sector. You should always consider what will benefit the Council area as a whole, not just any narrow sectoral interest.
- 184** You must not, in any case, accept any paid work in which you give advice on how to influence the Council or its decision-making processes.
- 185** In all situations, care is needed. You should be guided by the Code and, in particular, consider:
- could anything you do or say be construed as you having been improperly influenced to take a particular stance on an issue;
 - are you giving, or could you be perceived as giving, preferential access to any one side of an argument;
 - when seeking information on the progress of a case or particular matter, are you doing so in a factual way or could you instead be perceived as making representations or lending support; and
 - are you reaching your own view on a matter having heard all the relevant arguments and evidence (including the guidance of Council officials), and not simply agreeing or complying with any view expressed by your political group.

Lobbying in Quasi-judicial or Regulatory Matters

- 186** If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions concerning that cause. If you are approached and wish to remain as a decision-maker, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard and considered all relevant and material evidence and information. However, you can:
- advise employees of the representations you have received;
 - assist constituents in making their views known to the relevant employee;
 - seek factual information about the progress of a case; and / or
 - advise those that are lobbying who they can contact (being the relevant employee or a councillor who is not on the decision-making committee).

- 187 In determining an application, you cannot take into account any community benefits that are not essential to enable the proposal. In particular, the promise of money to the local community (for example, from wind turbines) can never be a consideration in deciding a planning application as this would be contrary to the principle that planning permission can never be bought or sold. Granting an application contrary to policy, because of the money on offer, could also result in you being subject to criminal charges for bribery.

A complaint alleged that a councillor failed to engage with, and denied access to, a constituent who had sent an email to the Council seeking information on a motion which had been endorsed by the councillor and approved by the full Council. The Council had referred the individual's email to the councillor for response. The individual considered that the councillor's response and subsequent comments in the press indicated that he did not want to engage with her. However, there is no specific obligation under the Code for individual councillors to respond to all who seek to lobby them, and as such the complaint did not amount to a breach of the Code.

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

In advance of a planning committee meeting to determine a contentious application to erect screen netting at a tennis club, a councillor made an unaccompanied visit to the objectors' property and engaged with them. The councillor had previously called in the application, meaning that it was to be considered by the committee. At the committee meeting, the councillor seconded a motion to approve the application with a different type of netting. The Panel held that, by not seeking the views of employees or having similar discussions with the applicant, she had given the appearance of unfairness and bias towards one of the parties and was therefore found to have breached the Code.

A complaint alleged that at a meeting of a planning committee, a councillor attempted to influence other members of the committee in their consideration of the application by suggesting a site visit. It was found that the councillor had simply suggested a site visit and there was no evidence he had attempted to influence the other members in their consideration of the application. It was found that suggesting a site visit in itself would not amount to inappropriate lobbying or influence that in turn could amount to a breach of the Code.