



INTEGRITY IN PUBLIC LIFE

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## ADVICE NOTE FOR COUNCILLORS ON QUASI-JUDICIAL AND REGULATORY DECISION-MAKING

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### 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to assist councillors in complying with the Councillors' Code of Conduct (the Code) when they are involved in, considering and making decisions on quasi-judicial and regulatory matters.
- 1.2 Councillors have a personal responsibility to observe and comply with the rules in the Code. This Advice Note is intended to assist them in interpreting the provisions in the Code, and particularly those in Section 7, in order to do so. The Advice Note should, therefore, be read in conjunction with the Code and the Standards Commission's Guidance.

### 2. When the Code Applies

- 2.1 The Code applies at all times and in all situations where you are acting as a councillor or have identified yourself as acting as such. This includes when attending meetings of your Council and when representing it on official business. The Code also applies when you could objectively be considered to be acting as a councillor. You should be mindful that your perception of when you are carrying out official business and when you are acting privately may be different to that of a member of the public. As an example, the Code could apply if you were undertaking an unofficial site visit. This is because not only are you undertaking the visit to inform your role as a councillor, it is likely you also would be perceived as doing so in that capacity. The Standards Commission has produced a [Card on when the Code Applies](#).
- 2.2 Section 7 of the Code outlines what councillors should do when involved in making decisions on quasi-judicial or regulatory matters. The Code notes quasi-judicial and regulatory decisions typically involve:
- Planning or other applications in terms of planning legislation;
  - Applications for alcohol licensing, and for betting and gaming premises;
  - Applications for taxi licences and all other forms of civic licensing;
  - Actions where the council is involved in any form of statutory enforcement procedure;
  - Any actions where the council is an employer and is involved in any disciplinary issues that a councillor may have a remit to deal with;
  - Any procedures for statutory approval or consent involving the council and where a councillor has a remit to deal with the matter; and
  - Any appeal procedure where the council has a role and where a councillor may be expected to adjudicate on applications, for example an Education Appeals Committee for school placements or school exclusions.

- 2.3 The Code notes, however, that the list above is illustrative and not exhaustive. As outlined above, such decisions are not limited to planning or licensing matters. They include, for example:
- Decisions made under the Community Empowerment (Scotland) Act 2015 in respect of community asset transfers, or the disposal or change of use of common good property;
  - Decisions made in respect of the distribution of Crown Estate grants; and
  - Decisions made in respect of Traffic Regulation Orders.
- 2.4 If you have any doubt as to whether something you are involved in is a quasi-judicial or regulatory matter, you should seek advice from the Council's Monitoring Officer.
- 2.5 It should be noted that you can become involved in decision-making on quasi-judicial or regulatory matters in a number of ways, not just when you are in a meeting where a specific application or matter is being considered and / or a final decision on it is due to be made.
- 2.6 Section 7 of the Code can apply:
- When you are taking part in a Council or committee meeting at which a decision on a specific application or matter is to be made;
  - When you are determining policy and strategic issues;
  - When you are determining matters directly related to an application;
  - When you are engaging with, or being lobbied by, interested parties;
  - During any site visit (whether official or unofficial);
  - When enforcement action is being considered; and
  - When you are acting as a representative.
- Further information and guidance on each of these scenarios is provided below.

### 3. What the Code Requires and Why

- 3.1 The Code notes the importance of proper and fair consideration and decision-making. To reduce the risk of a decision being challenged, councillors are obliged to make quasi-judicial or regulatory decisions objectively and with an open mind. Decisions must be based solely on the merits of the individual case and in accordance with the law, and the Council's policies and procedures. Councillors must avoid giving any impression of bias throughout the whole application process. They must avoid doing anything that could give rise to a perception that decisions are being made based on any councillor's own private interests or the interests of their friends, family or associates.
- 3.2 Councillors should always bear in mind, and adhere to, the Key Principles outlined in Section 2 of the Code and, in particular the principles of integrity, objectivity, and openness, when dealing with quasi-judicial or regulatory matters. This is because these types of decisions often have a significant impact on the applicant and others.
- 3.3 Members of the public are entitled to have confidence that decisions are being made fairly and on the individual merits of the case, rather than in any councillor's own private interests or the interests of their friends, family or associates. In addition, as paragraph 7.2 of the Code notes, there will often be formal legal routes beyond the Council to challenge a decision made on a quasi-judicial or regulatory matter. Many of these decisions will be controversial and, as such, may be subject to intense scrutiny. A failure by a councillor to adhere to the Code or to avoid any perception of having done so, could result in a challenge against the Council's decision, with associated cost implications. A successful challenge can have an adverse effect on the Council's reputation, as well as on that of the councillor in question. Even if any such challenge is ultimately unsuccessful, it is likely that the Council will still incur costs. There will also be an impact in terms of officers' time.
- 3.4 Adherence to the Code also protects your reputation and reduces the risk of a complaint about you being made to the Ethical Standards Commissioner. While you can seek advice from officers or the

Standards Commission, it is your personal responsibility to be aware of, and comply with, the provisions in the Code.

#### 4. Council and Committee Meetings

4.1 When you are considering or determining a quasi-judicial or regulatory matter, either at full Council or as a member of one of its committees (such as a licensing or planning committee), **you must:**

- Act fairly and be seen to be acting fairly;
- Be impartial and avoid any impression of bias;
- Consider all relevant and material information at the relevant meeting;
- Take into account professional advice;
- Seek advice if in doubt about what constitutes a relevant or material consideration; and
- Declare interests when required.

4.2 Essentially, when making quasi-judicial or regulatory decisions, you must do so objectively and with an open mind. Your decision should be made in accordance with the law, your Council's policies and should be based solely on the merits of the case. You should not make representations or decisions based on any private interest or along party lines. Questions you may wish to ask yourself include:

- Am I acting fairly and will I be seen to be acting fairly?
- Have I taken proper account of the public interest?
- Have I taken account of all the material and relevant facts, evidence, opinions and policies?
- Am I considering irrelevant and inappropriate matters, such as what may be reported by the press, or what I perceive might be popular at the ballot box?
- Have I taken account of advice from Council employees who are exercising their statutory duties and functions?
- Am I able to give clear and adequate reasons for my decision, if required?
- Have I indicated, outwith the committee forum, support for, or opposition to, the matter on which I am due to make a decision? Could I be perceived as having done so?

4.3 **Declarations of interest:** If you have a connection to any specific quasi-judicial or regulatory matter (such as an application) to be considered, you must apply the objective test in accordance with Section 5 of the Code. The objective test is:

*where a member of the public, with knowledge of the relevant facts (being the nature and extent of your connection and the matter that is due to be considered), would reasonably regard your connection to the particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.*

If the objective test is met, you are required to declare an interest and leave the room while the matter is being considered.

4.4 You should note that you may also be required to make a declaration, and to refrain from taking part in the discussion or decision-making, if you have created a conflict by reason of your actions. An example of this would be if, before the meeting, you have indicated support for the applicant, or have given a quote to the press, that demonstrates you have a closed mind on the matter. Again, if that is the case you must declare an interest and leave the room while the matter is being considered.

4.5 Conversely, what **you must not do** is:

- Pre-judge or demonstrate bias, or do anything that could lead others to perceive that you may have pre-judged the application or have any bias;
- Indicate support or opposition or otherwise make clear how you intend to vote before the meeting;
- Decide how you will vote before all information is available and considered at the meeting;

- Lobby other councillors for a particular outcome; and
  - Otherwise act improperly or give rise to any perception that you have done so.
- 4.6 You should be aware that indicating or implying support for, or opposition to, an application in advance of the decision-making meeting can include:
- Attempting to influence officers to adopt a particular position as that would imply you are prejudiced in your decision-making.
  - Expressing any view on the application before the appropriate meeting where the application will be considered.
  - Expressing any indicative or provisional views in the course of your involvement in any aspect of the application.
  - Otherwise act improperly or do anything which could reasonably create a perception that you have acted improperly. For example, being rude to an applicant when they are making representations.
- 4.7 **Officer advice:** It is important to note that while you must exercise your own judgement in determining quasi-judicial or regulatory matters, you must also comply with legislation, guidelines and the Code. It is also important to note that, in order to ensure you comply with legislation, guidelines and the Code, officers may be obliged to provide you with technical or legal advice. As they may be required to do so, this should not be perceived as an attempt to fetter your decision-making discretion. As such, you should not criticise officers on that basis.
- 4.8 **Predetermination v predisposition:** Pre-judging or making a pre-determination may invalidate the Council's decision and leave it open to legal challenge, as well as being a breach of the Code. For example, if you state that: *"wind farms are blots on the landscape and I will oppose each and every one that comes before the committee"*, you cannot claim to have retained an open mind on the issue and say that you are prepared to determine each planning application concerning a wind farm on its individual merits. However, saying: *"some people find wind farms ugly and noisy so I will need to be persuaded we should allow more in this area"*, demonstrates that while you understand the potential concerns of your constituents, you are willing to consider to the merits of any specific application and you have not 'closed your mind'.
- 4.9 Councillors may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. These will include political views and manifesto commitments. The key issue is that you ensure any predisposition you may have does not prevent you from considering carefully and thoroughly all the material and relevant factors concerning a decision, such as committee reports and supporting documents, professional and legal advice, and the views of those commenting on the application. In other words, you need to retain an "open mind" until considering, determining (and, if applicable) voting on the application.
- 4.10 Pre-judging would not include the situation where you have been a member of a committee that has made a planning decision which is subsequently 'called in' to be determined by full Council. It would also not include a situation where:
- you have made a previous decision on the same or a very similar application (for example, on an application that had previously been refused by a committee on which you were a member and was then re-submitted with or without modification); or
  - an application has previously been considered by a local review body and is then called to a planning committee.

## 5. Determining policy and strategy

- 5.1 Many quasi-judicial or regulatory decisions are taken against the background of, or relate to, a policy or strategy that has previously been agreed by the Council or one of its committees (for example, a

local development plan). As such policies are always under review, you should be mindful that they may change while applications made under them are being decided.

- 5.2 You can (and indeed are expected) to express views on policy and strategic issues of importance to the council area, while still being able to determine applications relating to them. When making statements about emerging policy, you nevertheless should be mindful that the Council must be able to demonstrate that all relevant and material evidence underpinning such matters has been considered. As such, you should make it clear that you will not reach a final decision until you are in possession of, and have considered, all relevant and material information. For example, you may think that a particular site being proposed for housing development in the draft local development plan is unsuitable. It would be perfectly legitimate for you to say something along the lines of, *“I’m not convinced that X is the best site for housing development”*. However, you should avoid saying *“nothing would convince me that the site in question should be developed for housing”*, as doing so could indicate that you had entirely closed your mind on the matter before being in possession of and considering all relevant and material information.
- 5.3 You can adopt an advocacy role by, for example, saying you would welcome planning applications for the redevelopment of an area, or would like to preserve greenbelt land or promote industry. As a member of a Licensing Committee or Board you may wish to express a view and seek to influence the Council’s formation of a policy to address local concerns, such as stating that you consider there is an overprovision for licensed premises in a particular area or an overprovision of Houses in Multiple Occupancy. However, you cannot then comment on a specific application, once lodged, in advance of the meeting at which it will be determined, in a manner that indicates you have closed your mind.
- 5.4 **Determining Directly Related Matters:** You should be aware that some decisions you may be asked to make are so closely and directly linked to a quasi-judicial or regulatory application that they should be treated as such (and determined on their individual merits, rather than in accordance with any political group or party decision). An example might be where a planning application is entirely conditional on supplementary funding being agreed by the Council. Any decision on the funding should be made on its merits alone.

## 6. Engaging with interested parties and members of the public

- 6.1 You may come into contact with quasi-judicial or regulatory matters in your role as a councillor in a number of ways. For example, you may be contacted by a constituent, either in person or in writing, about a particular application. You may be contacted by applicants, objectors (or if the application is not yet submitted, potential applicants and objectors), and the media. You may attend community council meetings where applications are being discussed. **In all of these contexts you should avoid expressing a view that indicates you have closed your mind on the matter.**
- 6.2 You should avoid giving or being perceived as giving preferential access to any party. You may wish to consider whether you have provided equal access to all parties and, if not, whether a failure to do so gives rise to any reasonable perception of bias or pre-judging.
- 6.3 If you intend or expect to be involved in the decision-making for any quasi-judicial or regulatory application, **you must not:**
- Organise support for or opposition to the application in any way;
  - Represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
  - Compromise yourself or your Council by creating a perception of a conflict of interest.
- 6.4 You should restrict yourself to giving advice about the process and what can and cannot be taken into account. **You can:**

- Help a community council / constituent / local group make their views known by passing these on to the relevant council officers.
  - Give advice on the correct procedure to follow and which officers to contact at the council.
  - Seek information on their behalf in respect of the progress of an application.
- 6.5 You should be very wary of expressing any form of opinion to those who are, or potentially could be, supporting or objecting to an application. If you chose to do so, you should make it very clear that you will only be in a position to make a final decision after you have heard all the relevant arguments and have taken into account all relevant and material considerations at the meeting when the application is to be considered.
- 6.6 If, at a ward level, you are asked to provide a constituent with assistance, you should ensure you manage their expectations in terms of the extent to which you can help. For example, you should advise a constituent who has sought help with a case that while you can seek information on their behalf, you cannot overturn a decision and that they will need to follow the appropriate procedures for doing so. You should also advise the constituent that you cannot seek legal advice from the Council on their behalf or pass on any legal advice provided to the Council or by a Council officer.
- 6.7 The Standards Commission has produced cards for councillors who are attending community council meetings, or surgeries and meetings with constituents. The cards explain what councillors can and cannot do, in terms of the Code, if they are to be a decision-maker on a quasi-judicial or regulatory matter. You may wish to consider printing and handing these out, in order to help manage expectations. The cards can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>
- 6.8 In circumstances where you will be a decision-maker but have been involved, or want to get involved, in organising support for or opposition to an application, **you must** declare an interest and withdraw from the meeting without participating in the consideration of the matter. It is good practice to advise those you are supporting that, if you are to do so, you will be giving up your right to be a decision-maker on the matter.
- 6.9 You should not pursue any casework that is likely to come before you at a quasi-judicial or regulatory committee, as doing so could preclude you from taking part in the discussion and voting. Again, you should explain why you cannot do so to any constituent who has asked for assistance. If you choose to pursue such casework, you should follow the guidance in the paragraph below on advocating for or against a cause.
- 6.10 If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support for, or make a decision on, a regulatory or quasi-judicial matter until the appropriate meeting, and only when you have then heard all the evidence. If you decide to advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause. You must declare an interest and leave the room while the matter is being considered and determined.
- 6.11 If you wish to act as a representative for someone who is involved in a quasi-judicial or regulatory matter (for example, as the applicant or as an objector), you must follow the provisions at paragraphs 7.9 – 7.12 of the Code, as outlined under Section 8 below.

## 7. Site visits

- 7.1 You should take care when undertaking any site visit outwith those formally agreed by the Council or one of its committees as part of the decision-making process. The Code does not preclude you from undertaking an informal visit by, for example, driving past a site to get a better idea of the

location and the potential impact of granting the application. You should note, however, that doing so could significantly increase the risk of a perception of pre-judging or bias. This is because such a visit is not one that is formal and recorded, with council officers present. As such, if you are undertaking an informal visit, you should take care to only view the site from a publicly accessible vantage point. You should avoid engaging in any discussions about the application or site during any such visit, and should not accept any lobbying or descriptive / promotional materials.

- 7.2 You must ensure you are familiar, and comply, with the procedures for any site visits that have been decided upon or agreed by the Council or one of its committees as a stage in the consideration of the application. The Code recognises that individual councils will have their own procedures for site visits and does not attempt to be prescriptive about what these should include. Some Councils will insist that you attend site visits if you are taking part in the final decision. This is particularly the case in relation to local review bodies carrying out site inspections under planning legislation.
- 7.3 When engaged on such a visit, you must not give any impression during the visit that you have made your decision prior to the Council or committee at which the decision is due to be made. You should avoid engaging in any debate about the planning issues or conducting yourself in a way that could give rise to any perception by other parties of any lack of fairness or impartiality.
- 7.4 As site visits can form part of the committee process, a degree of formality should apply, and you should behave (even potentially dress) accordingly.

## 8. Acting as a representative

- 8.1 Where you wish to make representations on behalf of constituents or other parties, you may do so (in accordance with paragraph 7.9 of the Code, as reproduced below), provided you:
- Do so in accordance with your Council's procedures;
  - Declare your interest in the matter; and
  - Having made any representations, retire fully from the meeting room (it is not sufficient to retire to a public gallery situated within the meeting room, except in the very limited circumstances described in paragraphs 7.11 and 7.12 of the Code).

7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application I WILL NOT:

- a) organise support for or opposition to the application in any way;
- b) represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) compromise myself or my Council by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of a Committee as a decision-maker but have been involved in organising support for or opposition to an application, I WILL:

- a) declare an interest in the matter, and
- b) withdraw from the meeting without participating in the consideration of the matter.

7.11 In circumstances where I am a member of a Committee as a decision-maker but wish to represent individuals or groups who are seeking to make representations for or against an application, I WILL:

- a) follow procedures agreed by my Council which afford equal opportunity to any parties wishing to make representations to do so;
- b) declare an interest in the matter; and
- c) only remain in the meeting, while that item is being discussed, for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- d) participate or attempt to participate as a decision-maker in that application;
- e) attempt to influence employees to adopt any particular position relative to the matter;
- or
- f) lobby other councillors who may be involved in the decision-making process.

7.12 In circumstances where I am not a member of any Committee which is making a decision on an application, but wish to represent individuals or groups who are seeking to make representations for or against it, I WILL:

- a) follow procedures agreed by my Council which afford equal opportunity to any parties wishing to make representations to do so; and
- b) only remain in the meeting for that item for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- c) participate or attempt to participate as a decision-maker in that application;
- d) attempt to influence employees to adopt any particular position relative to the matter;
- or
- e) lobby other councillors who may be involved in the decision-making process.

**8.2 When you are a member of the Committee:** The Code's provisions, as outlined above, mean that when you are a member of a committee that is to make a decision on a quasi-judicial or regulatory matter, you can only participate to the extent that your Council's procedures and standing orders allow any other individual to do so. You must not attempt to influence employees (other than when making representations in accordance with the Council's procedures and standing orders), or lobby other councillors involved in the application.

**8.3** If you intend to make representations before a committee of which you are a member, for example, to support your constituents' views, you should advise the Chair and committee clerk at the earliest opportunity. If you have made representations, you must declare an interest and cannot participate as a decision-maker in the application. You should ensure your declaration of interest is recorded in the minutes of the meeting.

**8.4** When making such representations, you should do so from the same place as any member of the public or applicant would do, and not your usual committee seat. This is to avoid any perception that you are acting as a committee member and participating in the decision-making, despite having declared an interest. It also helps avoid giving the impression that you will, or are attempting to, influence unduly other committee members.

**8.5 When you are not a member of the Committee:** If you intend to make representations before a committee you are not a member of then, again, you can only participate to the extent that your Council's procedures and standing orders allow any other individual to do so. Having made any such representations, you should then follow your Council's policies and procedures for parties appearing before committees, while the application is being discussed and determined. For example, if the Council's policy requires the party who has made the representation to leave the room, you should do so. If it requires the party to retire to the public gallery, you should do the same. If you retire to the public gallery, you should not do anything from there that could give rise to suspicion that you are trying to influence the decision.

## 9. Post-Decision

**9.1** You should bear in mind that quasi-judicial and regulatory decisions can be challenged. Therefore, if you have been involved in the decision-making, you should also be careful to avoid doing or saying anything after a decision is made that could give rise to a perception (even if false) that you pre-judged the matter, were biased or otherwise acted improperly.

## 10. Enforcement

- 10.1 If you are advised or become aware that the Council may need to take enforcement action in respect of any quasi-judicial or regulatory matter (such as an unauthorised development), you cannot get involved in, and cannot organise support for, or opposition to, such action. You can only refer the matter to the appropriate council team, or advise anyone making an enquiry about how to do so. Similarly, you cannot lobby other councillors (whether they are on the relevant committee or not), or put pressure on planning officers to either take, or not take, investigative or enforcement action.
- 10.2 Most enforcement matters are delegated to council officers. While you can ask for updates on how a particular enforcement is progressing, you cannot interfere in any action that is taken or is to be taken by your council. More information on how to distinguish between strategic and operational matters can be found in the Standards Commission's [Advice Note for Councillors on Distinguishing Between their Strategic Role and any Operational Work](#).
- 10.3 You should also bear in mind that the decision on one application may not be the end of the matter and that other, related applications, may be lodged in the future. You should be careful of the perception that any close interest you show in an enforcement matter may indicate that you are supporting, or are opposed to, any related application.

## 11. Other relevant provisions in the Code

- 11.1 Section 3 of the Code requires you to treat everyone with **courtesy and respect**. This includes constituents, council officers, applicants, objectors, and anyone representing an applicant or objector or making representations at a meeting.
- 11.2 It should be recognised that you are not in a political environment when you are making quasi-judicial and regulatory decisions and, as noted above, such decisions can be challenged if there is any appearance of bias. It should be noted that a failure to behave with courtesy and respect, including being dismissive or appearing to not be listening, could give rise to a perception of bias or pre-determination. Therefore, if you are in a quasi-judicial or regulatory setting, such as a planning or licensing committee where an application is being discussed, you should consider whether any remarks you wish to make could bring the council's decision-making processes into disrepute, or leave it open to legal challenge.
- 11.3 You should be very careful about what you are expressing, and the way you are expressing it, when asking questions of, or seeking information on, quasi-judicial or regulatory matters when you are on site visits, during committee or Council meetings, or in any dealing with council officers. You should be able to seek the information you require in a constructive, respectful, courteous and appropriate manner, without resorting to personal attacks, being offensive, abusive and / or unduly disruptive. In dealing with officers, members of the public, applicants, objectors and any representatives, you should always consider both what you are expressing and the way you are expressing it. It should be noted that a comment made in a quasi-judicial or regulatory environment may not attract the same level of protection in terms of the right to freedom of expression under Article 10 of the European Convention on Human Rights, as it might in other environments.
- 11.4 You should be mindful of how your conduct could be perceived. For example, checking your phone or tablet, or shaking your head when someone is making representations, could give the impression you are not listening and not prepared to even consider the points being made, even if that is not the case.
- 11.5 The Code states that you must not use, or attempt to use, your position or influence as a councillor to: improperly confer on or secure for yourself or others an advantage; avoid a disadvantage for

yourself or others; or improperly seek **preferential treatment** or access for yourself or others. It also notes that you must avoid any action which could lead members of the public to believe that preferential treatment or access is being sought. This means that if you (or your friends, family or associates) are making, or objecting to, an application, you must be careful not to take any action, or pursue avenues, that would not be open or available to other, non-councillor members of the public. You should also make sure you are not taking any action that could give rise to a perception you are doing so. For example, using your council email account to send a message to officers asking about the progress of an application you have submitted could give rise to a perception that you are using your influence as a councillor to pressure officers into dealing with your application as a priority, or to even grant or recommend it be granted.

- 11.6 You should also ensure you comply with the provisions in the Code that require you to maintain **confidentiality**. You must not disclose confidential information or information, in respect of any quasi-judicial or regulatory matters, 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. You must only use confidential information provided to you to undertake your duties as a councillor. You must not use it in any way for personal or party-political advantage or to discredit the council by, for example, sharing it with your party or disclosing it to the media.
- 11.7 The Code makes it clear that the default position is you should refuse all offers of **gifts and hospitality**, except in the very limited circumstances listed at paragraph 3.15 of the Code. It should be noted that acceptance can include accepting the promise of a gift or hospitality (even if that gift or hospitality is not then provided). Paragraph 3.18 of the Code provides that you must NOT accept any gift or hospitality from any individual or organisation who is awaiting a decision from, or seeking to do business with, the Council (for example, from an applicant for a licence or from a company seeking planning permission). This prohibition applies regardless of how small in nature or value the gift or hospitality offered may be. The ban on accepting gifts or hospitality from any individual or organisation who is awaiting a decision from, or seeking to do business with, the Council under paragraph 3.18 is absolute, meaning it is not qualified by any objective test. The prohibition also applies irrespective of whether you sit on a committee with an influence on the outcome of such matters (such as a licensing or planning committee). This is because there could be a perception that you could still be in a position to influence colleagues into making the decision one way or another.
- 11.8 You should also be mindful of accepting any gift or hospitality from an individual or organisation who is likely to have an interest in any future quasi-judicial or regulatory matter, such as being an applicant or objector. It is accepted that any person or organisation making such an offer may not necessarily be trying to influence you (or that you would be so influenced). You should be mindful, nevertheless, that this is a possibility. It is also a possibility that such an offer could give rise to a perception that influence is being sought. More information on this can be found in the [Standards Commission's Advice Note for Councillors on Gifts & Hospitality](#).

## 12. Further Sources of Information

- 12.1 The Standards Commission has published guidance and advice notes on how to interpret, and act in accordance with, the provisions in the Code, including those mentioned above. This guidance can be found on the Standards Commission's website at:  
[www.standardscommissionscotland.org.uk/guidance/guidance-notes](http://www.standardscommissionscotland.org.uk/guidance/guidance-notes)  
The advice notes can be found at:  
[www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings](http://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings)
- 12.2 The Standards Commission also publishes written decisions of Hearings held, and cases in which no action has been taken, on its website. These can be found at:  
[www.standardscommissionscotland.org.uk/cases/case-list](http://www.standardscommissionscotland.org.uk/cases/case-list).

- 12.3 The Improvement Service's Induction Materials include guidance on many issues relevant to councillors in carrying out their role effectively. These can be found at:  
[www.improvementservice.org.uk/products-and-services/skills-and-development/elected-members-development/elected-member-induction-materials](http://www.improvementservice.org.uk/products-and-services/skills-and-development/elected-members-development/elected-member-induction-materials).
- 12.4 If you have any queries or concerns about how to interpret or act in accordance with the provisions in the Code, you should seek assistance from your Council's Monitoring Officer or their deposes. Further information can also be obtained from the Standards Commission via email:  
[enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk).

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## ANNEX A: CASE EXAMPLES

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A councillor was found to have contravened the requirement to both act fairly and to be seen to be acting fairly when considering a planning application. The Hearing Panel found that the councillor was disrespectful and dismissive of a member of the public when a planning application that the individual opposed was being discussed at a committee meeting. This was because the Panel found that questions put to the member of the public, and the manner in which they were posed, could only reasonably be perceived as criticism of the member of the public's conduct. The Panel that it would have been reasonable for those in attendance or watching the meeting to conclude the Respondent's intention was to criticise and demean the member of the public and to elicit contrition from him, rather than to highlight issues that were directly relevant to the matter under consideration.

The Panel considered that while the councillor's decision on the planning matter may have been made solely on the merits of the application, it would have been reasonable for a member of the public watching the meeting to conclude that his views on the member of public in question (or that individual's conduct) may have inhibited his ability to approach the matter with an open mind.

The Hearing Panel found that the councillor had breached the Code and suspended him for one month.

A councillor on a Licensing Committee made comments to the press which demonstrated that he had pre-judged a house in multiple occupation licence application before it was heard by committee, where he voted against it. In doing, he had failed to avoid the appearance of improper conduct. If the councillor had acted in accordance with the Code and not taken part in the discussion and vote, it would have reduced the risk of the Council's decision being legally challenged. When the decision was then subject to legal challenge, the councillor took part in a subsequent vote about whether the Council should defend its decision to refuse the application. This was despite knowing that employees and the Licensing Committee convener had expressed concerns about his participation in the item at the initial meeting, and despite one of the grounds of appeal being that he, as an individual, had pre-judged the matter.

The Hearing Panel determined that the councillor should have withdrawn from both meetings and taken no part in the discussion or decision-making on the item at either. His failure to declare an interest and do so amounted to a breach of the Code. The councillor was suspended from all committees and sub-committees of the Council that make decisions on quasi-judicial or regulatory matters of the Council for four months.

A councillor failed to declare an interest in a planning application for a development at a former industrial site near his property. While the Hearing Panel noted that it did not have sufficient evidence before it to confirm whether the outcome of the decision on the matter would have had an impact, either positive or negative, on the councillor's property and, further that he had voted in accordance with recommendations made by officers, it nevertheless considered that given the proximity and the fact that it was an adjacent property separated only by a dual carriageway, a person with knowledge of these facts would reasonably consider that the councillor's connection to the site of the development proposal would be sufficiently significant as to be likely to affect his discussion or decision making. The Hearing

Panel determined, therefore, that the objective test was met and it was an interest that should have been declared.

The Hearing Panel found that the councillor had breached the Code. The councillor was suspended from a planning committee of the Council for one month.

A councillor was found to have been disrespectful during a meeting of a 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. It should be noted that because his comments had not been made in a political context, the councillor did not benefit from enhanced protection to his freedom of expression.

The Hearing Panel concluded that the councillor's conduct amounted to a contravention of the Code. The councillor was suspended for two months.

A Hearing Panel determined that a councillor sent two emails from his Council email address, which were signed off by him as a councillor, to members of an area Planning Committee putting forward some points in favour of a planning application that a firm he was a partner of had submitted. The Hearing Panel determined that members of the public would reasonably conclude that, in signing off his emails as a councillor, the councillor was using his position to seek preferential treatment. The Hearing Panel agreed that in making representations in favour of the application, outwith the Committee forum and the correct procedure, he was also seeking to privately lobby other councillors about the planning application.

The Panel concluded that the councillor had breached the Code. The councillor was suspended, for a period of six months, from all committees and sub-committees of the Council that make decisions on quasi-judicial or regulatory matters.

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## ANNEX B: SCENARIOS & FACTORS TO CONSIDER

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**Scenario 1:** You have been invited to attend an information session with a well-known local developer. Can you attend the session? What factors should you consider in making a decision about whether to attend?

You should find out whether the developer has submitted an application or is likely to do so in the near future. You should consider whether you are a member of a committee that is likely to make decision in respect of any application. You should also check whether the information session is open to members of the public and / or any other members or any officers have been invited or intend to go to the session. You should consider why have you been invited and how your attendance could be perceived. In doing so, you should also consider whether any hospitality might be offered.

**Scenario 2:** You are on a Licensing Sub-Committee that is being asked to grant a short-term lets licence. You have previously expressed concerns to colleagues about public disturbances near the premises. Can you take part in the consideration of the application?

Public nuisance can be a relevant and material consideration in terms of licensing applications. A factor would be exactly what was said and whether you have you expressed something that showed you have pre-judged the matter or could not consider the application with an open mind (if so, you should declare an interest and not take part in the discussion or decision-making on the item). Another factor would be when you expressed concerns (i.e. before or after the application was lodged). You should also consider whether you could be perceived as having tried to lobby other councillors. You should consider whether the question of public disturbances nearby is likely to be a relevant and material consideration (for example, is it mentioned in the in paperwork).

**Scenario 3:** You are the Convener of a Licensing Board and are chairing a meeting where an alcohol licence for a premise is being considered. The meeting is already behind schedule, with a number of other matters still to be considered and the applicant is speaking at length in support of the application. You consider some of their submissions to be irrelevant and note an objector is also present and is waiting to speak. What can you do?

You should politely advise the applicant that the Committee's time is limited that it can only take into account relevant and material considerations. You should ask the applicant if they have any further submissions to make on these considerations alone. You should ensure the objector is afforded an opportunity to make submissions too, but only on any relevant and material considerations. You should take care not to come across as bored or dismissive (for example by asking the applicant to 'hurry up' or checking your watch).