



INTEGRITY IN PUBLIC LIFE

ADVICE NOTE FOR COUNCILLORS ON HOW TO IDENTIFY AND DECLARE INTERESTS

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, provides advice to councillors on:
- how to identify declarable interests; and
 - when and how to declare an interest at meetings.
- 1.2 The Councillors' Code of Conduct (the Code) identifies the types of connections that would lead to a councillor having to declare an interest. The Standards Commission has produced Guidance on how the provisions in the Code should be interpreted. The Guidance can be found on the Standards Commission's website at:
<https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>.
- 1.3 This Advice Note provides advice about how councillors can identify whether they have a declarable interest. Further information and detail on this can be found in the Guidance. This Advice Note also provides guidance on when and how such a declaration should be made. The Advice Note further suggests wording councillors may wish to use when declaring an interest.

2. How to identify a declarable interest

- 2.1 Section 5 of the Code outlines a three-stage process you should use to identify whether you have a declarable interest and what you are required to do if so. The three stages are
1. Connection
 2. Interest
 3. Participation
- 2.2 **Stage 1 - Connection:** You are firstly required, in terms of stage one, to consider whether you have a connection to any specific item to be discussed. A connection is any link between the matter being considered by the Council and you, or any person or body you are associated with. This could be a family relationship or a social or professional contact. A connection will also include anything that you have registered as an interest under Section 4 of the Code (other than if you have been appointed or nominated by your Council to an outside body).
- 2.3 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. It also includes being:
- Council Tax or rate payer, or a council house tenant;

- A councillor when matters relating to elected members' remuneration, allowances, expenses, support services or pensions are being considered; or
- A member of an outside body to which you have been appointed or nominated by the council (such as regional transport partnership, an IJB, a city region deal, an ALEO or a voluntary organisation).

2.4 This means that you can take part in discussions and voting on matters that could affect the outside body without having to declare your membership. That is unless:

- the matter being considered is quasi-judicial or regulatory in nature and the outside body has an interest (i.e. as applicant or objector); or
- you have an additional personal interest.

2.5 An example of where you may have a personal conflict (other than through your membership of the outside body), in this context, would be where your partner works for the outside body, and where the body is seeking a package of funding from the Council for its operations that could have an impact on your partner's job.

2.6 It should be noted that a subject that may apply to a large proportion of the 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.

2.7 **Stage 2 – Interest:** If you have a connection to a matter being discussed, you are then obliged, under stage two, to identify whether it amounts to an interest that requires to be declared. In making this decision, Code requires you to apply the objective test. This is: *whether a member of the public, with knowledge of the relevant facts, would reasonably regard your connection to the matter as being sufficiently significant as to be likely to influence your discussion or decision-making.*

2.8 It is important to note that the test is not what you 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.

2.9 If the test is met, then the connection is an interest that requires to be declared.

2.10 **Stage 3 – Participation:** If you have a declarable interest then, under stage three, you cannot participate in any discussion or voting on the matter. You should leave the room until any discussions and decision-making on the matter has concluded. It is not sufficient for you to withdraw to the back of the room or to any public gallery. If the meeting is being held online, you should go to a separate breakout room or leave and re-join after the meeting after the discussion on the matter has concluded. It is not sufficient for you to turn off your camera and microphone for the duration of the discussion. This is to ensure you do not influence other members and / or to avoid any perception you could be doing so.

3. When an interest should be declared

3.1 As a councillor, you must consider, at the earliest stage possible, whether you have an interest to declare in relation to any matter which is to be considered at a meeting. This includes formal Council or committee meetings (whether online or in person) and informal meetings with officers. Before any meetings, you should review agendas, papers or any other information in order to decide, at the earliest possible opportunity, whether you have a connection to a matter to be discussed which, after applying the objective test, amounts to a declarable interest.

- 3.2 You should seek advice at the earliest stage on whether you have an interest to declare. Normally you will seek advice from the Council’s Monitoring Officer or their deputy, and/or any committee services officers. Asking an officer for advice in advance gives them an opportunity to clarify any queries they have about the connection and to give more detailed advice than they may be able to provide if you only seek advice immediately before the start of a meeting. Ultimately, however, it is your personal responsibility to decide whether you have an interest or not.
- 3.3 You must disclose or declare your personal interests both in formal and informal dealings with Council officers and other councillors, not just in formal Council or committee meetings. This is an important consideration, especially when you are seeking advice from Council officers or other sources. You should not assume that officers and others will know or remember your connections and interests.
- 3.4 At the meeting itself, your declaration must be made at the earliest possible opportunity. However, if you do only identify the need for a declaration of interest when a particular matter is being discussed, then you must declare it as soon as you realise it is necessary to do so.
- 3.5 The interest must be declared at the meeting in question, regardless of whether or not you have already provided advance notice of it to any officer, colleague or the chair. You should not rely on others to remind you of the interest; it is your personal responsibility to ensure you declare it and comply with the Code.
- 3.6 If you are in any doubt about whether you have a declarable interest that would prevent you from participating in a Council discussion or decision, you should seek the advice of the Council’s legal officers before taking part.

4. Wording to use

- 4.1 In order to be as transparent and consistent as possible, you may wish to consider using the following wording:
“I declare an interest in item (x) for the following reason(s)...”
- 4.2 The information you provide in terms of your reasoning does not need to be detailed but should be sufficient for those at the meeting to understand why you are making a declaration. You should be mindful of the need to protect the confidentiality of another person’s business or financial interests when making a declaration. You are only required to provide enough information to make it clear why you consider your connection to the matter to be considered is sufficiently significant as to amount to a declarable interest.
- 4.3 For example, you could state:
“I am a friend of the managing director of (x), who are the applicants in respect of...”, or “my partner is employed by (x), who stand to benefit from the financial assistance recommended in the report...”
- 4.4 Again, in order to be as transparent as possible and so that your actions are recorded in any minute of the meeting, you should end your declaration by clearly stating that you will leave the room when the matter you have the interest in is being considered. For example, you may wish to state: *“As I have declared an interest, I will now withdraw from the meeting / leave the online meeting during any discussion and voting on item (x)”*.

4.5 Where you have considered making a declaration, but have chosen not to on the grounds that your connection does not amount to an interest, you may wish to explain your thinking by making a **transparency statement**. It may be, for example, that you are confident you do not have an interest, but know that other people could be aware of your connection to the matter without having knowledge of all the relevant facts.

4.6 In those circumstances you might want to state:
"I have a connection to this item by reason of... However, I have applied the objective test and do not consider I have an interest to declare because...".
If you think it would be helpful, you can ask the committee staff clerking the meeting to note such a transparency statement in the minutes.

5. Wording to use where your interest arises from membership of an outside body

5.1 Being a member of an outside body you have been appointed or nominated to by the Council as its representative does not constitute a connection which might lead to you having to declare an interest unless:

- (1) the matter being considered by your Council is quasi-judicial or regulatory; or
- (2) you have a personal conflict by reason of your actions, your connections or legal obligations.

5.2 If you are required to declare an interest, you may wish to state:
"I have a connection to item (x) as I am a member/director of (y) as the Council's representative. Although this would not normally be a declarable interest, the matter before the Committee is one that is quasi-judicial/regulatory in nature. I will therefore withdraw from the meeting during any discussion and voting on that item"; or

"I have a connection to item (x) as I am a member/director of (y) as the Council's representative. Although this would not normally be a declarable interest, I have a personal conflict arising from (z). I will therefore withdraw from the meeting during any discussion and voting on that item."

6. Further Sources of Information

6.1 If you have any queries or concerns about this Advice Note, or how to interpret or act in accordance with the provisions in the Councillors' Code of Conduct, you should seek assistance from your Monitoring Officer.

6.2 Further information can also be obtained from the Standards Commission via email: enquiries@standardscommission.org.uk

