



INTEGRITY IN PUBLIC LIFE

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# COUNCILLORS' CODE OF CONDUCT GUIDANCE

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# GUIDANCE ON THE COUNCILLORS' CODE OF CONDUCT

## SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

The Councillors' Code of Conduct (Code) required by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) was initially issued in 2003, and was most recently reviewed and re-issued in 2021. A copy of the Code can be found at:

<https://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct>

This Guidance has been produced by the Standards Commission for Scotland (Standards Commission) and contains case illustrations (some of which are based on cases from Scotland, Northern Ireland and Wales, and some of which are hypothetical), along with examples of factors councillors may wish to consider when applying the requirements of the Code.

Councillors should be mindful, when seeking to apply the Code to their own situation or circumstances, that the lists of factors in the Guidance and examples provided are not exhaustive. All councillors have a personal responsibility to ensure that they comply with the provisions of the Code.

While councillors should observe any guidance from the Standards Commission, it is not a substitute for the Code. The purpose of the Guidance is to provide supplementary information to aid councillors in interpreting the Code. **Councillors are, therefore, obliged to ensure they have read and understood the provisions of the Code itself. Reading the Guidance should, in no way, be considered a substitute for doing so.**

This document is a standalone version of the Guidance, without the Code embedded. It is intended to provide easy access to the Guidance itself.

The Standards Commission will continue to review the Guidance on a regular basis to ensure it is relevant and fit for purpose. As such, any feedback, comments, suggestions for improvements and further hypothetical cases are welcome.

### Guidance

- 1 The revised Code was approved by the Scottish Parliament and was effective from 7 December 2021.
- 2 This Guidance is effective from 7 February 2024 and replaces all previous versions.
- 3 This Guidance is for Councils and councillors. By accepting office as a councillor, you have accepted you are obliged to comply with the Code. The aim of this Guidance is to provide supplementary information to help you do so. An Advice Note on the Code aimed at members of the public can be found on the Standards Commission's website here: <https://www.standardscommissionscotland.org.uk/codes-of-conduct>
- 4 The Code is not designed to restrict you; its purpose is to help you meet the required standards of conduct.
- 5 This Guidance is also directed at co-opted members of committees and sub-committees who are not elected councillors. All references to 'I' in the Code, and to 'I' and 'you' in the Guidance are directed specifically at councillors and co-opted members of committees and sub-committees. However, it should be noted that the Standards Commission has no legal powers to enforce the

provisions of the Code against anyone other than elected councillors.

- 6 Councils should make arrangements to deliver training and induction sessions on the ethical standards framework and should encourage all their councillors and senior employees to attend and, where possible, keep a record of attendance. Subject to resource limitations, the Standards Commission can support any such training and induction programme. Any request for assistance or support should be directed to the Executive Director.

## **Your Responsibilities**

- 7 The Scottish public has an expectation that councillors will conduct themselves in accordance with the Code and the nine key principles of public life, as outlined in Section 2. You must, therefore, comply with the provisions of the Code in all situations and at all times where you are acting as a councillor, have identified yourself as a councillor, or could objectively be considered to be acting as a councillor.
- 8 The Code does not apply to your private and family life. In determining whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, would reasonably consider that you were acting as a councillor at the time of the events in question. It should be noted that this can include when you are engaging in online activity.
- 9 The Code does not prevent you from expressing views (including making political comment) provided you do so in a way that is compatible with the substantive provisions of the Code, being Sections 3-7 and Annex A inclusive. This includes the requirements to behave with courtesy and respect and to maintain confidentiality.
- 10 You should attend any training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code, this Guidance, and any other guidance and advice notes issued by the Standards Commission.
- 11 It should be noted, in terms of the Standards Commission's Policy on the Application of Sanctions, ignoring advice and / or training opportunities that could have prevented a contravention of the Code may be considered an aggravating factor by the Standards Commission when deciding on the appropriate sanction to be applied, following a breach finding.
- 12 You may also find it helpful to refer to the Improvement Service's guidance and induction material, which can be found on their website at:  
<https://www.improvementservice.org.uk/products-and-services/skills-and-development/elected-members-development/elected-member-induction-materials>.
- 13 Although it is ultimately your personal responsibility to comply with the Code, paragraph 1.10 of the Code makes it clear that if you are uncertain about how the Code should be interpreted and applied, you should seek advice. Your Council is obliged by law to appoint a Monitoring Officer. They and their deputies will have experience of dealing with queries relating to the Code and can give you advice.
- 14 As it is your personal responsibility to comply with the Code, the fact that you may have sought, and then followed such advice would not be a defence to a breach of the Code; however a discussion with the relevant employee may help to clarify your own thinking. If you are found to be in breach of the Code, the fact you sought advice may be taken into account by the Standards Commission as a mitigating factor when deciding on the appropriate sanction. Conversely, a failure to seek and / or follow advice may be considered as an aggravating factor.

- 15** You should always try to seek advice at the first opportunity, for example from the Monitoring Officer, Deputy Monitoring Officer, or Committee Clerk. You should be mindful, however, that the person from whom you are seeking advice may not have full knowledge of the matter, or your personal circumstances. On rare occasions, for example when an alleged breach is to be considered by the Standards Commission at a Hearing, you may wish to seek external legal advice. You will be responsible for the cost of any external legal advice you have chosen to obtain, either to assist you with interpreting the Code, or in responding to any complaint about your conduct.
- 16** You are encouraged to promote and support the Code at all times and to encourage others to follow your example in doing so. Experienced councillors should consider whether they can act as a mentor to others to help them to understand the Code.
- 17** The Code should be read as a whole. It may be necessary to cross-reference different provisions.
- 18** It should be noted that all references to 'Monitoring Officer' in this Guidance should be taken as including a Monitoring Officer's nominee or deputy, as appropriate.

## **SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT**

- 19** The Code is underpinned by the nine key principles of public life in Scotland, namely: Duty, Selflessness, Integrity, Objectivity, Accountability & Stewardship, Openness, Honesty, Leadership and Respect.
- 20** The key principles are for guidance and you should ensure that you always have regard to, and follow, these principles. You should not persuade others to act in a way that would be contrary to the key principles.
- 21** A breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code. However, the key principles can be used by the Ethical Standards Commissioner's office (in its investigatory role) and the Standards Commission (in its adjudicatory role) to assist with interpretation of alleged breaches of the substantive sections of the Code, being Sections 3 to 7 and Annex A inclusive.
- 22** It is your personal responsibility to ensure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision-making in your role as a councillor. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly and in accordance with the Code.

## SECTION 3: GENERAL CONDUCT

### Respect and Courtesy: General

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

### Respect and Courtesy: Applicability of the Code

- 30** It is very important to note that the rules of good conduct set out in Section 3 of the Code must be observed in all situations where you are acting as a councillor, which includes when you are representing the Council on official business.
- 31** The Code is applicable in all situations where:
1. you are acting as a councillor (for example, when attending Council or committee meetings, engaging with council officers, assisting constituents or undertaking a site visit);
  2. you have identified yourself as a councillor at the time of the conduct in question (for example, you state you are a councillor on your social media account); and / or
  3. you could objectively be perceived to be acting as a councillor (for example, when posting about council-related matters on social media, or when attending an event to which you have been invited 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 how it is viewed by a member of the public. In making an objective determination about whether you were acting as a councillor, the Standards Commission will consider whether it would be reasonable for members of the public, with knowledge of the relevant facts, to consider that you were acting as such at the time of the events in question. Similarly, even if you have not identified yourself as a councillor, the Standards Commission will proceed to consider whether it would be reasonable for members of the public, with knowledge of the relevant facts, to consider that you were acting as a councillor at the time of the events in question.

- 32** Factors the Standards Commission may consider when determining if the Code applies include whether:
- you have been clear about the capacity in which you are acting;
  - you have described yourself as a councillor (for example in a social media account or biography, or in the sign-off to correspondence), or are otherwise readily identifiable as acting as a councillor in the situation / circumstances;
  - you have been accurately and reasonably named as a councillor or otherwise identified as such (for example, in a community council agenda or minutes, or in a report being considered by an outside body);
  - you are on Council premises or at a Council event;
  - you are using IT equipment and / or an email account supplied by your Council;
  - your conduct could reasonably be regarded as bringing your position as a councillor, or your Council, into disrepute;
  - you are engaged in political activity or commenting on political matters, or matters that fall within the scope of the Council's functions;
  - you are invited to attend an event because you are a councillor; and
  - you are representing the Council or speaking on behalf of the Council.
- 33** Due to the public nature of social and print media, and your profile as a local authority member, you may wish to consider whether members of the public might automatically assume you are commenting in your capacity as an elected politician in anything you post, publish or share in either forum.
- 34** In making any decision on whether the Code applies, the Standards Commission will consider whether a member of the public, with knowledge of the relevant facts, could reasonably perceive you as having been acting as a councillor at the time of the alleged breach of the Code. The fact that complainers or witnesses to any conduct may be aware that you are a councillor is not in itself sufficient for the Code to be engaged.

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

*A councillor was convicted of sexual assault in respect of an incident that occurred at a Trades Association event. The Panel was satisfied that it would have been reasonable for an informed*

*member of the public to have perceived that the councillor was acting as a councillor at the event, given both the public nature of it and also because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel concluded that the Code applied.*

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

*A councillor who sexually harassed a member of the public in private transport, and at a private residence, after a non-council related event was not considered to be acting as a councillor during either incident and, as such, the Code did not apply.*

*A councillor met a member of the public at a council run event and subsequently entered into a personal relationship. The councillor was then abusive towards the member of the public on a night out. As the councillor was not acting in his capacity as a councillor at the time of the incident, the Code would not apply to his conduct.*

*A councillor attended a family wedding and introduced himself as a councillor. The councillor then became involved in an altercation with another guest. The press later reported that the councillor has been charged with disorderly conduct and assault. The Code did not apply because while the councillor had introduced themselves as a councillor, it would not be reasonable for members of the public to consider that he was attending the wedding (being a private event) in that capacity. The subsequent identification of the councillor in the media would not mean the Code was engaged.*

*A councillor mentioned their role as an elected member during a parking dispute with a neighbour and indicated they would report the neighbour to the Council. The Code would apply because the councillor had identified themselves as such during the conversation in question.*

*A councillor operated an anonymous social media account in which they regularly posted commentary relating to politicians, political parties, and matters of public interest. One of the posts related to their comments made, as a councillor, to a motion made at the Council and provided a link to the Council's website. The councillor was later identified in the media as a councillor and subsequently admitted to operating the account. It was found that the councillor was acting in his capacity as a councillor at the time he was operating and posting on the account.*

## **Respect and Courtesy: Social Media**

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

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

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

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

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

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

- 40** As a councillor, you have an enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) when your comments are political in nature or concern matters of public interest. The Code does not prevent you from engaging in robust political debate, making points or from scrutinising the performance of the Council, provided you do so in a respectful manner that is compatible with the Code.

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

Therefore, you may wish to think about:

- whether your comments are likely to bring your office or the local authority itself into disrepute;
  - whether you are treating others with courtesy, respect and consideration;
  - whether making your point in a respectful and constructive manner may have more of an impact in terms of influencing others;
  - the fact that 'liking', re-posting and re-tweeting comments or posts, or publishing links to other sites are likely to be perceived as endorsing the original opinion, comment or information, including information on other sites;
  - whether to allow disagreement on your social media pages;
  - the fact that tone can be harder to convey online so consideration should be given to whether humour, irony and sarcasm will be perceived as such;
  - whether you have to respond and / or if it is appropriate or helpful to do so;
  - the stricter rules that apply to election publicity;
  - whether anything you post could be considered obscene.
- 41** The Standards Commission has produced an Advice Note that outlines the approach it will take when issues that concern the application of Article 10 of the ECHR and the right to freedom of expression arise. It also suggests issues councillors should consider in order to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code. The Advice Note can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

### **Respect and Courtesy: Equalities**

- 42** You are expected to advance equality of opportunity and to seek to foster good relations between different people. It is unacceptable for a public figure such as a councillor to express views that

indicate a discriminatory attitude towards people on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity.

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

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

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

## **Respect and Courtesy: Bullying & Harassment**

- 43** Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. It usually, but not always, arises as a result of an individual misusing their power.
- 44** Harassment is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. It can be experienced directly or indirectly (for example, being in the room which unacceptable conduct is being displayed and being affected by it). Harassment is not confined to conduct defined as such under the Equality Act 2010 (i.e. unwanted conduct related to a relevant protected characteristic).
- 45** It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident.
- 46** Even if the behaviour in question is unintentional, it can still be classed as bullying and / or harassment. It is the impact of the behaviour, not the intent, that is the key. You should therefore be aware of the impact of your conduct as it may be experienced by others, and remember that what may seem harmless to you can be offensive to someone else. It should be noted, however, that any decision made by the Standards Commission as to whether conduct could amount to a breach of the bullying and harassment provisions in the Code will involve an objective assessment of the behaviour, intent and reasonably foreseeable impact. This will include taking account of the perception of the person to whom the behaviour has been directed, and whether it was

reasonable for the conduct to have the effect of making that person feel offended, humiliated, intimidated, frightened and / or uncomfortable.

- 47 Bullying and harassment can occur through all means of conduct and communication – including social media posts, shares and comments. It can also arise through a lack of communication, such as the deliberate exclusion of an individual from a conversation, work or social activity.
- 48 You are responsible for your own behaviour. You must ensure that you are aware of, and comply with, the provisions concerning bullying and harassment in the Code and also any policy your Council has on ensuring dignity in the workplace.
- 49 The Standards Commission has produced an Advice Note for Councillors on Bullying and Harassment. The Advice Note is available on the Standards Commission’s website at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

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

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

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

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

### **Respect and Courtesy: Council Employees**

- 50 It is understood that in the political environment of local government there may be tensions between individual councillors and between party groups. Factors such as minority administrations, coalitions and multi-member wards may have a bearing on such tensions, but it is nevertheless essential to ensure that the interests of the electorate are represented as effectively as possible. This can only be achieved if councillors behave in a respectful way towards each other and towards Council’s employees.
- 51 The requirement to respect all Council employees includes employees of trusts or other arm’s

length external organisations. It can also include:

- employees of any other organisations where it might be reasonably perceived that the Council (and by implication the councillor) has a supervisory influence over those individuals; and /or
- employees of contractors providing services to the Council.

This might, for example, include cleaners or security guards employed by an agency contracted to provide services to the council and who work in council buildings and / or solely and entirely on council work. It is less likely to include individuals working on external premises for an independent firm or company which is instructed to provide particular services or undertake a specific task for the council, and which has other clients and unrelated work.

- 52 You have a right to ask Council employees for information. This does not mean, however, that you have a right to receive that information, or that you can demand such information be provided (see the guidance below on confidentiality and data protection). If you are asking employees for information, you are obliged to do so in a courteous and respectful manner. The Improvement Service and Standards Commission have produced a joint Advice Note on the Right of Access to Information. This can be found at:

<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

- 53 It should be noted that anyone can make a complaint to the Ethical Standards Commissioner about an alleged breach of the Code. There is no obligation on anyone, including Council employees, to make a complaint even if it appears that the Code may have been breached. It may be the case that the matter can be resolved informally. Asking a Council employee to make or support a complaint could compromise their political neutrality. In addition, employees may have to continue to work with the councillor who is the subject of the complaint while it is being investigated. You should not, therefore, act in a manner that may pressure officers into making or supporting a complaint.

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

### **Distinguishing between Strategic and Operational Matters**

- 54 The Standards Commission has produced an Advice Note for councillors on distinguishing between their strategic role and any operational work, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>. In general, if a duty is delegated to an employee, then it is likely to be operational in nature. You may wish to represent the views of your constituents on individual matters, such as a housing issue, but you should be aware that employees may feel pressured by a councillor challenging their actions or appearing critical of some aspect of their work. This is particularly the case with junior employees, who may not be used to dealing directly with councillors. Any concerns about performance should be raised in private with the employee's line manager. It should be noted that the requirement to avoid becoming inappropriately involved in operational work and matters includes the work of, and matters concerning, Council Arm's Length External

Organisations (ALEOs), and applies regardless of whether or not you have been appointed by the Council as a member of the ALEO in question.

### **Respect and Courtesy: Public Comment about Council Employees**

- 55** As a councillor, you are entitled to scrutinise how effective the delivery of services has been. You should be careful, however, not to make public statements which expressly or by implication criticise the actions (or inaction) of an identifiable individual employee or group of employees (where individuals in that group are, or could be, identifiable). You should note that the concept of a public statement is wide and can cover a variety of scenarios such as the published minutes of a meeting, a comment on social media, or being overheard in a public area, such as a corridor or tearoom. Mutual respect and courtesy between councillors and those who work for, or on behalf of, your Council is essential as it helps ensure the efficient and effective running of local government.
- 56** The requirement to refrain from criticising employees in public also applies to former employees, if the criticism is about them in that capacity (i.e. their performance, conduct or capability when they were employed by the Council).
- 57** In considering whether an individual employee or group of employees is or are publicly identifiable, the Standards Commission will consider whether ordinary members of the public in the local area would be able to readily understand who they were.

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

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

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

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

### **Respect and Courtesy: Council and Committee Meetings**

- 58** The words ‘Chair’ and ‘Convener’ in paragraph 3.11 of the Code, and the word ‘Chair’ in this Guidance, are not restricted to those specific terms and apply to any individual holding a similar chairing or convening role.

- 59 The role of the Chair in any Council meeting, including a committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of employees) can be expressed. At the same time, the Chair has a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the Council's Standing Orders and that the questions and discussion remain focused. This includes determining the point at which conclusions should be reached. Chairs are required to adopt a balanced approach to help ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. As such, you should ensure you are familiar and comply with your Council's Standing Orders. The role of the Chair in reaching judgements about how the meeting is to be conducted should be supported and respected.

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

- 60 You are accountable for your own conduct at all times in terms of the Code, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. During the course of a meeting, the Chair has the right to rule on and to take appropriate action as necessary, on the acceptability of conduct, and any language used and comments made. This can include requiring the withdrawal of a remark, asking for an apology, or any other action necessary to allow the meeting to proceed properly. Factors you should consider include whether:
- your behaviour, including your body language, is courteous and respectful (even when you hold a different view to that of other participants);
  - you are treating others with courtesy, respect and consideration;
  - your choice of language in meetings is appropriate and meets the high standards expected by the general public;
  - it is appropriate to refer to other councillors by nicknames or to refer to them in the second person, by using terms such as 'you';
  - newspapers, mobile phones, laptops and other devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying; and
  - your conduct could diminish the public's opinion of, and trust and confidence in, its elected representatives.

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

*A councillor said "sieg heil" when the Chair of a committee curtailed debate on a motion. It was found that the words "sieg heil" are synonymous with the former fascist Nazi regime in Germany and are directly associated with obedience to an oppressive dictatorship. As such, it was found that the councillor's use of them could only be taken as an unacceptable way of protesting about how the Chair had conducted the meeting in respect of the item under consideration. Although the*

*councillor had retracted the comment when asked to do so, it was found that he had breached the Code by failing to show respect to the Chair.*

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

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

## Gifts and Hospitality

- 61 The Standards Commission has produced a separate Advice Note for councillors on Gifts and Hospitality which can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 62 In your role as a councillor, you should never **ask for** or **seek** any gifts or hospitality. However, you will be **offered** gifts and hospitality: the Code makes it clear that the default position is you should refuse these, except in the very limited circumstances listed at paragraph 3.15 of the Code – see Notes 65 to 67 below for further information. It should be noted that acceptance can include accepting the *promise* of a gift or hospitality.
- 63 'Gifts' or 'hospitality' can come in many forms. Beyond the everyday things like bottles of wine or offers of lunch, they can include benefits such as tickets to sporting or other events; provision of services at a price below that generally charged to the public; incurring personal debts or obligations on your behalf, relief from indebtedness, loan concessions, or other financial inducements.
- 64 **Objective test:** you should always consider whether your acceptance of a gift or hospitality, in the limited circumstances permitted under paragraph 3.15 of the Code, would allow an informed member of the public to think it might lead to your being influenced in your judgement on matters. You should also always consider whether you would have been given the gift or hospitality if you were not a councillor. In doing so, you should think not just of your own perception, but the perception of others.
- 65 You should also not give or offer a gift or hospitality that is intended to induce someone, for example an employee or fellow councillor, to act improperly. You should note that in terms of the [Bribery Act 2010](#), the following cases are offences:
- Case 1** is where:
- (a) P offers, promises or gives a financial or other advantage to another person, and
  - (b) intends the advantage
    - (i) to induce a person to perform improperly a relevant function or activity, or
    - (ii) to reward a person for the improper performance of such a function or activity.
- Case 2** is where:
- (a) P offers, promises or gives financial or other advantage to another person, and
  - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

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

### **Limited circumstances in which gifts and hospitality may be accepted**

- 69** Provided Paragraph 3.18 of the Code does not apply, paragraph 3.15 sets out the very limited circumstances in which you might accept a gift or hospitality from another person in your role as a councillor. These would be things such as a pen, or a notepad, or hospitality such as tea or coffee at a local event, or a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference.
- 70** Similarly, where you are representing the Council in a civic role, you will be expected to accept hospitality normally associated with that role, for example, a dinner to commemorate the anniversary of an event. If you are invited to such events as a result of your civic role, you can accept the invitation. The Standards Commission's Advice Note on Gifts and Hospitality provides a series of considerations intended to assist you in scrutinising offers of hospitality, to help you reach fair and transparent decisions on what should be accepted and what should be declined. It also provides examples of typical scenarios to show you how you might use those considerations.
- 71** Paragraph 3.19 of the Code also recognises that there may be situations where, as a councillor, and in particular if you hold a role as a civic leader of your Council (Convener, Provost, and / or their deputies) you may be expected to accept gifts on the Council's behalf. These could be, for example, from representatives of a twin town or another organisation visiting your area. In those circumstances, if it would cause embarrassment or offence to refuse the gift, you can accept it. You should, however, pass the gift to the appropriate Council employee at the earliest opportunity.

### **Perception and Influence**

- 72** The provisions in the Code on gifts and hospitality are designed to avoid any perception that councillors may be using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest (for example, by serious organised crime gangs seeking to obtain contracts and licences to facilitate money laundering).

- 73** The requirement for councillors to advise their Council’s Monitoring Officer of any offers of any gifts or hospitality from the same source on a repeated basis is important as it ensures the Council can take action if it appears the same individual or organisation is attempting to influence its elected members and decision-making. It is also open to you, in the interests of transparency, to declare any gifts and hospitality you have declined.

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

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

## **Confidentiality**

- 74** You have a statutory right, subject to certain statutory exemptions (including those covered by data protection legislation), to Council information under the Access to Information provisions of the [Local Government \(Scotland\) Act 1973](#) and the [Freedom of Information \(Scotland\) Act 2002](#). Although councillors in their own right are not individuals subject to the Freedom of Information (Scotland) Act 2002, you should be aware that information you produce or receive could be subject to disclosure as this legislation provides individuals with the right to request recorded information held by the Council. You also have a right to request information where you can show a need to know that information in order to perform your duties as a councillor. The Improvement Service and Standards Commission have produced a joint Advice Note for Councillors on the Right of Access to Information. This can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 75** It is legitimate, however, for your Council to require you to treat certain documents and information, provided to you in your capacity as a councillor, as confidential. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing, reputation and integrity of a Council, it is essential that you respect the provisions at paragraphs 3.21 to 3.23 of the Code.
- 76** Information can become confidential in a number of ways, including in terms of the following examples:
- a Council employee, or a member of the public, has asked you to treat it as confidential;
  - the Council has resolved to treat it as exempt information in terms of the [Access to Information provisions](#) of the Local Government (Scotland) Act 1973, or is likely to do so;
  - information which, under the data protection legislation or the General Data Protection Regulation contains personal data, the release of which would lead to a breach under those provisions.

- 77** Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear, from the nature of the information or from the circumstances in which it was provided to you, that it is confidential. This may include the following types of information:
- commercial information, such as information relating to a contract or a contractor's business;
  - personal or sensitive information, such as information relating to an individual's employment or health;
  - information which is confidential as a result of a statutory provision;
  - information discussed in closed or private sections of meetings;
  - legal advice obtained by the Council (either provided by employees or external legal advisers). This will be covered by legal privilege and should not be disclosed without the Council's permission;
  - information received as a result of a relationship where there is an expectation of confidence, such as between a councillor and a constituent; and
  - information about any ongoing investigation being undertaken by the Ethical Standards Commissioner.

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

- 78** As a councillor, you are a data user and must comply with data protection legislation and your Council's data protection policies when handling information. Council information provided to you must only be used by you for the purpose for which it was provided.
- 79** You should be aware that a breach of confidentiality could result in you being personally liable under data protection legislation. This may result in a potential criminal prosecution, civil liability for damages and / or a fine being imposed by the Information Commissioner, in addition to any reputational damage being incurred by you and / or the Council.
- 80** Confidential information must not be disclosed or in any way used for personal or party-political advantage or in such a way as to discredit the Council. This applies even in circumstances where you hold the personal view that such information should be publicly available.
- 81** You must not provide the media with 'off the record' briefings on the general contents or 'line' of confidential material or information. You also cannot disclose confidential information to any external employer, including MPs and MSPs. Disclosures of this kind can also seriously undermine and devalue the work of the Council and its committees. They can also damage the relationship of trust and respect between councillors and officers, and between fellow councillors.
- 82** Sometimes confidentiality is a matter of timing, in that information may be released into the public domain at a later stage (either in the short or long term). However, you must respect the requirement for confidentiality even if you do not agree with it or consider that the information should be released at an earlier stage.
- 83** You should seek advice if you are in any doubt as to whether any documents, information or advice are confidential, particularly if you are intending to disclose these to any outside body or individual.

- 84** As a councillor, you are in a position of trust and members of the public (particularly constituents) may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish, at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential. Disclosure may not just be a breach of the confidentiality provisions in the Code, it can also be a breach of data protection legislation and, therefore, could have legal consequences for you as a data controller and reputational consequences for the Council.
- 85** If you are considering disclosing any information which could reasonably be regarded as being confidential, you should always obtain confirmation (preferably in writing) that you have the authority to do so. However, you must be aware that the person who holds the information may not necessarily have the authority to permit any such disclosure. For example, another councillor may have passed on information to you. The fact that this information has been passed to you by another councillor does not mean that the information in question is not confidential, or that the councillor in question has the authority to permit you to disclose it further. It should also be noted that the requirement to refrain from disclosing confidential information is not limited to sharing it with members of the public or the press. In some circumstances it can also include disclosures to other elected members. You should also be wary of disclosing confidential information inadvertently, particularly when using any personal email, any artificial intelligence tool and the 'chat' function during online meetings.
- 86** You should be aware of the provisions of data protection legislation. If you hold personal information (such as details of constituent enquiries, constituents' personal details or other information such as medical conditions), you are required to be registered as a data controller under data protection legislation. You must have a lawful basis for sharing personal data. While this will be for you to determine, it may be that personal data received from constituents can be shared for the purposes of carrying out a task in the public interest. You must abide by the following rules when holding and processing personal data:
- you must only use the information for the purposes for which it was given. In particular, you must not use information you have acquired as a councillor for political, election or campaigning purposes;
  - you must not share such information with anyone without the consent of the person giving the information, or unless required to do so by law. You should note, however, that you do not need a constituent's consent to share information with Council employees for the purpose of assisting with the resolution of an enquiry or complaint, provided you do not use the constituent's personal data in a way that goes beyond their reasonable expectations in contacting you (unless you are required to do so by law); and
  - you should not keep the information any longer than you need to.

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

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

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

## **Use of Council Resources**

- 87** As a general rule, facilities paid for by the public purse, and provided for use in Council business, should only be used for Council business unless otherwise expressly permitted by the Council itself. It is recognised, however, that some Councils may allow councillors occasional personal use of Council-provided equipment, such as laptops, mobile telephones and tablets. It is likely that your Council will have policies and protocols on related matters, including on the use of IT and other equipment for personal and official purposes, and on employee support for councillors. The Code obliges you to adhere to such policies and protocols and, therefore, you should familiarise yourself with their contents.
- 88** The Code now explicitly forbids the 'imprudent' (i.e. without thinking about the implications or consequences) use of Council facilities. Given the importance of achieving [best value](#), it is important that councillors are not seen to be using facilities irresponsibly or wastefully. An example of this would be printing documents unnecessarily.
- 89** Facilities must never be used for party-political or campaigning purposes. You are reminded of the relevant provisions of [Section 2 of the Local Government Act 1986](#), which are as follows:
- 2. Prohibition of Political Publicity*
- (1) A local authority shall not publish, or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party.*
- (2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters -*
- (a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;*
- (b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.'*
- 3. A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves.*
- 90** While restrictions on party-political use of facilities are particularly in focus during election campaigns, they apply at all times. Councils and councillors should also take into account and adhere to the terms of the [Code of Recommended Practice on Local Authority Publicity](#) issued in terms of Section 4 of the Local Government Act 1986. It is not recommended that you provide your Council's physical or email addresses as ways to contact you about an election campaign.
- 91** The provisions under paragraphs 3.24 to 3.25 of the Code apply at all times and not just when you are acting as a councillor. Other factors to consider include:
- whether you are either explicitly or impliedly allowing others to use Council facilities improperly;
  - how the resource you are using is funded (for example, who pays for any transport or administrative support); and
  - whether the resource is being used solely for you to carry out official Council business or for an activity which has expressly been authorised by the Council, or whether you are using it for something else as well.

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

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

## **Dealings with the Council and Preferential Treatment**

- 92** As a councillor, you must avoid conduct which seeks to further your own personal interests, or the interests of others you are connected to. You must also avoid conduct that may give the impression you are seeking preferential treatment. This can include when you are dealing with fellow councillors, as well as employees. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment is being sought. You should note that *seeking* preferential treatment can be a breach of the Code, regardless of whether any action is taken as a result. Factors to consider include whether you are asking employees to act in a way:
- that suggests you are seeking preferential treatment for yourself or others;
  - that would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party-political purposes; and
  - without considering your inherent position of power and influence over Council employees.
- 93** Paragraphs 3.26 to 3.28 of the Code are designed to ensure there is transparency in your dealings with employees of the Council. There is an onus on you to advise employees of any connection you may have to a matter when seeking advice, assistance or information whether within or outwith a formal meeting of the Council or its committees. This applies equally in circumstances where employees are seeking advice, assistance or information from you.
- 94** You should not assume that employees will be aware of, or will remember, any personal interest you have in a matter, when you are seeking their advice, assistance or information either in writing, in person, by phone or video call, or at a meeting. It is important that you identify any connection as it may be that it is inappropriate for the employee to provide you with advice, assistance or information on the matter, if your connection is one that could amount to declarable interest. For more information on what is meant by ‘connection’ and a ‘declarable interest’ in this paragraph, see the further guidance provided under Section 5 (Declaration of Interests).
- 95** [Section 112 of the Local Government Finance Act 1992](#) provides that, if you are in arrears of two months or more of Council tax or three months of community charge, you cannot vote on certain matters relating to Council tax, including the setting of Council tax. In such circumstances, you would be required to disclose that this legislation applies to you in any meeting where such matters are being considered, and you would not be allowed to vote. It is a breach of the Code to do so, and may also constitute a criminal offence. If you are in any doubt as to whether this section applies to you, you should seek the advice of the Monitoring Officer.

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

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

## **Appointments to Outside Organisations**

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

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

- 97** You should be aware that you may need to register, in terms of Section 4 of the Code, your membership of another body. That membership could also amount to an interest that would need to be declared in terms of Section 5.
- 98** If you are appointed or nominated by the Council to an outside body, as a director or a trustee, you will assume legal responsibilities as an individual. These legal responsibilities, as a director of a company, arise by virtue of the Companies Acts, and / or as a charity director or trustee by virtue of the [Charities and Trustee Investment \(Scotland\) Act 2005](#) (if the outside body is a registered charity). The Office of the Scottish Charity Regulator has up to date guidance on the latter scenario at: <https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/>. If appointed or nominated to an outside body, you should ensure that you are clear about the role and the responsibilities you will have to it as an individual. You will also

have to act in the outside body's best interests and, as a member, will be bound by the provisions in any code of conduct it has adopted, when acting as such.

- 99** If you have any doubts about your responsibilities or concerns about the impact of an appointment to an outside body on your ability to adhere to the Councillors' Code, you should seek advice before accepting such an appointment or before any meeting at which appointments are to be made. Advice can be sought from Council employees or, if appropriate, from employees of the outside body.

## SECTION 4: REGISTRATION OF INTERESTS

- 100** This section of the Code is intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of you or your family, friends or personal associates.
- 101** The Register is intended to be a public record of the interests that might, by their nature, be likely to conflict with your role as a councillor.
- 102** The fact that you have subsequently declared a registrable interest at a meeting would not necessarily be a defence to a complaint that you breached Section 4 of the Code by failing to register it. Accordingly, you should be as transparent and careful as possible when considering which interests you are required you register.
- 103** The Register should cover the period from 12 months before your election and your whole term of office. For example, if you were newly elected or re-elected to office in May 2022, your Register should cover the period commencing May 2021 and include the full subsequent term of office. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office. However, you should amend the Register to reflect the change of circumstances, e.g. *“Parliamentary researcher from xx/xx/2017 until xx/xx/2020”*.
- 104** You should be aware that [The Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (Register of Interests) Amendment (No. 2) Regulations 2021 (the 2021 Regulations) state that Council employees must retain the record for a period of five years after the date a councillor ceases to be in office.
- 105** You are required by the 2021 Regulations to update your entries in the Register of Interests within one month of your circumstances changing. While your Council may issue reminders, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or of your circumstances changing. You should also ensure that you review all your entries in the Register at least once a year, even if you think nothing has changed.
- 106** For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. You ensure you have provided enough information for a member of the public should be able to understand the nature of the entry in your Register without having to undertake any research. A failure to include sufficient information for an entry to be understandable could amount to a breach of the Code. For example, if you are registering employment you should include the full name of your employer, not just an abbreviation. You should ensure your Register is amended if you have made a mistake with an entry (such as recording the name of an employer incorrectly). You may wish to keep a note of why you have made the amendment, in case anyone questions this.

### Category One: Remuneration

- 107** Paragraph 4.4 states that you must register any work for which you receive, or expect to receive, payment or reward. The level of remuneration, or how much you receive, does not matter in terms of whether an entry needs to be made under this category. This means paid work, no matter how casual or trivial in nature, requires to be registered. You are only required to register work for which you have received remuneration or are due to receive payment or reward (if you have undertaken the work and are awaiting payment).

- 108** You do not need to state the exact job title of any remunerated post you hold as an employee, but you should provide a description that allows a member of the public to understand the type of role. For example, you could state:

*“Since 2019, receive an ongoing salary as a part-time customer service agent for X+Y Limited, being an IT consultancy firm” or “receive hourly rate payment for one day per week self-employed work for GreenFingers, being the trading name of my landscape gardening business which has operated since 2016” or “received two fixed payments for writing two articles, published in May and September 2021 for Z, a trade magazine”.*

- 109** ‘Undertaking’ is defined in Annex B of the Code as (a) a body corporate or partnership; or (b) an unincorporated association carrying on a trade or business, with or without a view to a profit. ‘Body corporate’ includes entities such as companies, limited liability partnerships and, potentially, Scottish Charitable Incorporated Organisations. ‘Unincorporated associations’ includes clubs, societies, and mutual associations. The key as to whether an interest is registrable under this category is whether you carry out work for the undertaking for which you receive some form of ‘remuneration,’ i.e. wage, salary, share of profits, fee, expenses or other monetary benefit or benefit in kind.
- 110** Paragraph 4.5 of the Code confirms you do not have to register any work that you carry out on behalf of the Council in your capacity as councillor, or any remuneration, expenses and allowances you receive for being a councillor (including any paid in terms of the Local Government allowance, expenses and remuneration regulations). This includes any work you carry out in respect of joint boards or joint committees comprising solely of councillors.
- 111** Paragraph 4.10 of the Code indicates that you should register ‘any other work’ besides a trade, profession or vocation. Such work might include freelance work that you undertake for a particular sector, or a paid consultancy, or educational or training courses you provide in return for payment.

### **Category Two: Other Roles**

- 112** Where you have been appointed as a member of an outside body (including where you have been nominated or appointed by the Council), you should ensure that the membership is registered in your Register of Interests either under Category One: Remuneration (if the position is remunerated) or under Category Eight: Non-Financial Interests (if the position is not remunerated).
- 113** There is no need to register being a councillor or a member of a joint board, a joint committee or of COSLA.
- 114** If you hold an unremunerated directorship in an undertaking, and you are remunerated by a parent or subsidiary of that undertaking, you should register the unremunerated directorship under ‘Other Roles.’ For the sake of transparency, you should register the name and registration number of both undertakings, and the relationship between the two. Your remuneration in the parent or subsidiary undertaking should also be registered under Category One: Remuneration.

### **Category Three: Contracts**

- 115** You must register an interest under this category where:
- you as an individual; or

- an undertaking that you have a substantial interest in either as a partner, director or as a shareholder (where the value of shares you hold is as described under Category Six: Shares and Securities)

has an upcoming or ongoing contract with the Council for the supply of goods or services, or for the execution of works. You do not need to state the value of the contract.

This category may overlap with Category One: Remuneration. If so, you should add an entry under both sections, for transparency. An example of the detail required would be as follows: *Director and shareholder of cleaning company which has a contract with MidScotland Council to valet the council's vehicle fleet. Contract start date: 1 February 2010.*

#### **Category Four: Election Expenses**

**116** 'Donations' towards election expenses covers all monetary donations, including any received via crowdfunding, if individual contributions (including any from the same source) amount to more than £50. It should be noted that only election expenses relating to councillors' most recent election to a local authority in Scotland need be registered. Such donations require to be registered even if they are outwith the Electoral Commission's reporting requirements. Non-monetary assistance, such as the printing of campaign leaflets at no cost, do not need to be registered on your Council's Register of Interests (even if they fall within the Electoral Commission's reporting requirements).

#### **Category Five: Houses, Land and Buildings**

**117** In terms of paragraph 4.18 of the Code, there is no requirement to register residences outwith Scotland although, in exceptional circumstances where such an interest may affect a matter before the Council, you may need to declare such an interest in terms of the requirements under Section 5 of the Code (Declaration of Interests). You must, however, register any interest you have in any houses, land and buildings in Scotland, even if they are located outwith your Council area.

**118** In terms of paragraph 4.19 of the Code, you are required to provide the Council's Monitoring Officer with the full addresses of any houses, land and buildings you own or have any other right or interest in. However, there is no requirement for any full address you provide to be disclosed on the Council's website or otherwise made publicly available. This means it is sufficient for the purposes of your publicly available register to simply identify the Council ward in which the property is located - for example, it is sufficient for your register to state that you own a residential property in the West End ward, Dundee.

**119** Examples of other rights you may have in houses, land and buildings may include a right as a tenant, an agricultural tenant, as a trustee or beneficiary of a trust, or through a liferent. While it would not include testamentary or succession interests, it would include a matrimonial home or other permanent residence (even if you own another property). There is no requirement to register a property that is only intended as a temporary residence (for example, if you are staying with friends or family while work is being undertaken on your main residence, or staying with a relative to provide care). You should be aware however under Section 5 of the Code, you may have a declarable interest as a result of a temporary residence, if the objective test is met.

#### **Category Six: Interest in Shares and Securities**

**120** 'Shares and securities' is intended to cover all types of financial investment models, including stocks, bonds, options, investment trusts, and other forms of part-ownership, including equity and debt ownership.

- 121** You have a registrable interest, in terms of paragraph 4.20(a) of the Code if, at any time, you own, or have an interest in more than 1% of the issued share capital of a specific company or body.
- 122** You have a registrable interest, in terms of paragraph 4.20(b) of the Code if, at the relevant date, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000. The 'relevant date' is defined in Annex B of the Code as the date you were elected, and on 5 April each year following your election.
- 123** For example, you are elected as a councillor on 7 June 2021. For the purposes of paragraph 4.20(b) of the Code, 7 June 2021 is the first 'relevant date' on which you must consider the market value of your shares and securities. If, on 7 June 2021, the market value of any shares and securities (in any one specific company or body) you own or have an interest in is greater than £25,000, you must register that shareholding. Thereafter, the next 'relevant date' on which you must consider the market value of your shares and securities is 5 April 2022, and then 5 April each following year.
- 124** An interest under shares and securities will also include investments made under self-invested pension plans. However, you do not need to declare an interest in the Council's Pension Fund.
- 125** In relation to paragraph 4.20 of the Code you will have a registrable interest as a trustee, (either as an individual or jointly with other trustees), where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust's value or the value of that benefit is greater than £25,000.

### **Category Seven: Gifts and Hospitality**

- 126** The default position is you should refuse gifts and hospitality, except in very limited circumstances (see paragraphs 3.13 to 3.20 of the Code). However, if you have accepted and registered gifts and hospitality under the previous versions of the Code, these should remain on your Register of Interests for the term of office.

### **Category Eight: Non-Financial Interests**

- 127** When considering whether you have a registrable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think could influence your actions, speeches, decision-making or voting in the Council. You should consider whether such membership might lead members of the public to reasonably conclude that it could influence your actions, speeches, decision-making or voting, in terms of paragraph 4.22 of the Code. If so, you should register the interest.
- 128** A non-financial interest could include membership of a private society or private club, which has entry requirements or qualifications for membership. A relevant factor is whether the organisation has entry requirements or qualifications (other than payment of a fee or subscription or agreement to terms and conditions of membership), as opposed to being open to all. Further relevant factors could include whether you are an active member, and also whether you are an officeholder (given an officeholder might be more likely to interact with the Council on behalf of the body, club, society or organisation). You may also wish to consider whether a failure to register the interest could be viewed as a deliberate omission.
- 129** In order to ensure you are being as transparent as possible, you should consider erring on the side of caution. This may mean you register a large number of non-financial interests. If so, you

are reminded that any non-financial interest registered under Category Eight of the Code, is a connection in terms of Section 5 of the Code (Declaration of Interests). That means you will have to consider whether it is an interest that requires to be declared (because the objective test is met), in terms of paragraph 5.5 of the Code. If it is likely you would be required to declare the interest when on a committee responsible for making quasi-judicial or regulatory decisions (such as on planning and licensing applications), it may be reasonable to assume the objective test would also be met in terms of whether it should be registered.

- 130** You should bear in mind that the examples of possible non-financial interests stated in paragraph 4.22 of the Code are illustrative only and, therefore, are not an exhaustive list of potential non-financial interests. Others could include membership of, or participation in, community groups or advocacy bodies and relationships with groups who could potentially be impacted by, or benefit from, decisions taken by the Council (such as sports clubs or conservation groups).

### **Category Nine: Close Family Members**

- 131** Paragraph 4.23 of the Code is intended to help ensure that your Council complies with accounting standards that require a public body's accounts to disclose the possibility that its financial position may have been affected by any related party transactions. Such transactions include contracts for the supply of goods and services, and the execution of works. While you are also required to declare the financial interests of others under paragraph 5.5 of the Code, if the objective test is met, there is a risk that your Council's finance team may not realise that you have done so when preparing the accounts. You are, therefore, required to register the interest of any close family member who has transactions with your Council or is likely to have transactions or do business with it. This is to ensure there is transparency in respect of any potential influence that anyone close to you, in your capacity as a member of the Council, may have over a transaction the Council has been involved in that, in turn, had an impact on its overall financial position.

- 132** The Code does not define what is meant by 'close family member' as this will depend on your individual circumstances, but it is likely that a spouse, cohabitee, partner, parent and child would be considered to fall within this category. You do not need to disclose the family member's name or any other personal data in the register; it is sufficient for you to identify the relationship and nature of the transaction. For example, *"my son is a partner in a business that has a contract to provide catering services to the Council"*.

- 133** The fact that a close family member may be employed by your Council or one of its ALEOs would not be considered a transaction or business for the purposes of Category Nine. Therefore, while such a connection could amount to a declarable interest under Section 5 of the Code, it would not require to be registered.

*A councillor failed to ensure his one-third shareholding in a company was registered correctly and timeously. While the Hearing Panel accepted that there was no intention to mislead or deceive, and that neither the councillor nor the company had gained any benefit from the oversight, he was nevertheless found to have breached the Code.*

*A complaint alleged that a councillor failed to register a financial interest in respect of her remunerated employment as an office manager with a member of the Scottish Parliament. The Hearing Panel noted that the councillor had publicly announced, via a posting on a social media site, that she would be working for the MSP. While it was accepted that this demonstrated there was no evidence of any deliberate attempt to conceal the employment, the councillor was nevertheless found to have breached the Code.*

*A complaint alleged that a councillor failed to include in her Register of Interests the part-ownership of a property. It was found that while the councillor's interest in the property was limited until the end of a liferent, the title to the property as registered in Land Register nevertheless demonstrated that she was a part-owner and, as such, she should have registered her interest in it. The councillor was found to have breached the Code.*

## **SECTION 5: DECLARATION OF INTERESTS**

**134** 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.

**135** 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**

#### **Paragraph 5.1**

**136** 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.

**137** 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.

#### **Paragraph 5.2**

**138** 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.

**139** 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.

**140** 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.

### Paragraph 5.3

**141** 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. The exception to this, as stated at paragraph 5.4(c) of the Code, is membership of an outside body to which you have been nominated or appointed by your Council.

### Paragraph 5.4

**142** 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.

**143** 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.

**144** 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.*

**145** 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.

**146** 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.

**147** 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.

**148** 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.

**149** 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.

- 150** 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, in 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).
- 151** 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.
- 152** 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.
- 153** 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.
- 154** 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**

### **Paragraph 5.5**

- 155** 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.
- 156** 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.
- 157** 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.
- 158** 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.
- 159** 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.
- 160** 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.
- 161** 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.
- 162** 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.

### **Participating in Decisions on the Council’s Budget when you have a personal interest**

- 163** You should always consider whether you have a connection, as a result of *personal* circumstance, in the Council’s budget. If so, you should apply the objective test, and consider whether the

connection (both in terms of its nature and scale) is so significant, in relation to the overall budget, that it would be considered as being likely to influence your discussion or decision-making on the overall budget. If so, you will need to declare an interest and leave the room. You should always seek advice from officers if you are unsure about whether any connection would meet the objective test in terms of the budget.

**164** Examples of where a connection arising from a personal interest may meet the objective test (and therefore amount to a declarable interest) might include:

- circumstances where a decision on the budget, or one aspect of it, could have a direct impact on your partner's employment; or
- where the grant of funding to a company you own is being considered.

**165** For the purposes of consideration of the overall Council budget, being in receipt of a benefit available to other members of the public, such as a carer's allowance, would not be a connection that would amount to a declarable interest.

**166** If the budget has been divided into specific and distinct parts (or lines) it may be that case that, having declared the interest, you would only need to leave the room until the discussion and any voting on that specific part or aspect (or line) had concluded. You should always seek advice from officers about whether this is appropriate before doing so.

**167** As noted under point 150 above, 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 (provided you do not have a personal conflict by reason of one or more of the examples outlined under paragraph 5.4(c)(2) of the Code).

**168** In circumstances where you have a connection as a result of a personal circumstance but, having applied the objective test, you do not consider it to be a declarable interest (in respect of either the overall budget or a specific part or line), then you may wish to consider making a transparency statement (see paragraph 5.7 of the Code and the Guidance on it below).

### **Participating in Decisions on Appointments or Roles within the Council when you have a personal interest**

**169** You are entitled to participate in any discussions and decision-making, and are not required to declare an interest, on the appointment of elected members to any roles or committees within your council and any motions of no confidence or ones calling on an elected member to resign, even if you could be affected financially, politically or reputationally by the decision.

### **Participating in a Council's consideration of a finding of the Standards Commission following a Hearing, under Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000**

**170** Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 requires a council to consider the written findings of a Standards Commission Hearing within three months of receiving them or within such longer period as the Standards Commission may specify in writing. You are entitled to participate in your Council's consideration of such a written finding, even if you were the Respondent, attended the Hearing or were otherwise involved in the complaint that was the subject of the Hearing (as the Complainer or as a witness). It should be noted, however, that the Council cannot consider evidence or submissions and cannot change the Standards Commission's finding or written decision.

## Elected Members on Pension Committees

**171** The Standards Commission granted a dispensation in June 2024 to elected members appointed or nominated to pension committees and pension boards. This dispensation allows elected members of pension committees (including ones concerning the pension fund either as a scheme employer or as an administering authority) and pension boards to take part and vote at full Council on pension issues (including where the pension committees has referred a decision to full Council meetings) without being required to declare an interest as a pension committee member. The dispensation also allows all elected members of pension committees and pension boards to take part and vote in all issues at any pension committee meeting, without having to declare an interest as an elected member. It should be noted that Pension Committee and Pension Board members will still need to declare an interest and withdraw if the objective test is met as a result of them having an additional personal interest.

## Employment by an MP or MSP

**172** You may well have a connection to a matter being discussed by virtue of being employed by an MP or MSP. Whether this meets the objective test and amounts to a declarable interest will depend, however, on the individual facts and circumstances of each case. This could include the specific matter before your Council, your role (for example, whether you are employed as caseworker or whether you assist with policy work) and the role of the MP or MSP (for example, whether they are also a Minister with responsibility in respect of the matter being discussed at Council). You should seek advice if you are in any doubt as to whether you should declare an interest. You must also make the capacity in which you are acting clear in conversations and correspondence (including with officers), meetings and on social media.

*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**

#### **Paragraph 5.6**

- 173** 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.
- 174** Thereafter, when the item is being considered, you should leave the room (unless those still taking part in the consideration of the matter retire to a separate 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.
- 175** 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.*

- 176** 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.
- 177** 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>.
- 178** 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”*.

### **Paragraph 5.7**

- 179** 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.
- 180** In those circumstances you might want to make a transparency statement (although a failure to do so would not amount to a breach of the Code). 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.
- 181** You should note, however, that transparency statements are not an alternative to declaring an interest when such a declaration would be required. You must always apply the objective test to any connection and if, having applied the test, you determine that connection amounts to an interest, you must declare that interest and withdraw as explained above.

### **Paragraph 5.8**

- 182** 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.
- 183** Any application for a dispensation should be submitted either by email to [enquiries@standardscommission.org.uk](mailto: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.

**184** In considering any dispensation request, the Standards Commission will consider information provided in respect of the two points above, and also whether any connection outlined would be likely to be sufficiently significant as to amount to a declarable interest when the objective test is applied.

**185** It should be remembered that a subject or category 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, the Standards Commission was asked to issue a dispensation for councillors who were private tenants so that they could take part in discussions and decisions relating to regulation and policy of the private rented sector in a Council area, regardless of any financial or non-financial interest that they or any close relative or friend may have. The Standards Commission declined the request, on the grounds that it was too general and unspecific. The Standards Commission noted that, as being a private tenant was a subject that applies to a large proportion of the general public, it would not automatically be a connection under the Code. In terms of paragraph 5.1 of the Code, the councillors concerned would be required to consider the specific matter in which they were to become involved when assessing whether they had a connection. If so, they would then be required to apply the objective test to determine whether that connection amounted to a declarable interest.

**186** 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.

**187** If a dispensation is granted, you should state this at the meeting, and ask for it to be recorded in the minutes.

## **SECTION 6: LOBBYING AND ACCESS TO COUNCILLORS**

**188** 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. Section 6 of the Code outlines what you can and cannot do when you are approached and lobbied by individuals or groups intent on making their views known. It is vital that you are aware of, and ensure you comply with, the provisions in Section 7 of the Code (which concern quasi-judicial and regulatory decision-making) when anyone approaches or lobbies you.

**189** 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.

- 190** 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.
- 191** 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.
- 192** 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.
- 193** 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**

- 194** 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.
- 195** 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>).
- 196** 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 complaints handling procedure (based on the Scottish Public Service Ombudsman's Model Complaints Handling

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.

**197** 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**

**198** 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**

**199** 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.

**200** 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.

**201** 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.

**202** 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**

**203** 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).

**204** 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.*

*A complaint alleged that three ward councillors attempted to lobby members of the Council's Traffic Regulation Orders Sub Committee by issuing a letter urging them to make a low traffic neighbourhood order in their ward permanent. It was noted that there was a difference between councillors being lobbied by individuals or groups who are seeking financial gain or advantage, and those who seek policy change for the wider community. It was found, from the terms of the councillors' letter, that they were sharing both their own views on the Traffic Regulation Order but also the views of their constituents. It was noted that they were entitled to make such views known and that there was no breach of the provisions, under Section 7 of the Code, that regulate how councillors who are not members of a decision-making committee, like the Sub-Committee, can make representations either for or against a matter being considered.*

## SECTION 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

### Introduction

**205** The Key Principles set out at Section 2 of the Code, in particular Integrity, Objectivity, and Openness, are of particular importance where you are taking decisions on quasi-judicial or regulatory matters. The decisions you take will often have a significant impact on the applicant and others. As paragraph 7.2 of the Code sets out, there may be formal legal routes beyond the Council to challenge a decision made on a quasi-judicial or regulatory matter. As many of the decisions will be controversial, they may be subject to intense scrutiny. A failure to observe the terms of the Code, or the perception that you have not 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 your own. Even if any such challenge is ultimately unsuccessful, it is likely that the Council will still incur costs.

### Quasi-judicial or Regulatory Decisions

**206** The list of quasi-judicial or regulatory decisions at paragraph 7.3 of the Code is illustrative and not exhaustive. You should note that such decisions are not limited to planning or licensing matters and would 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.

If you are in any doubt about whether an application or matter is quasi-judicial or regulatory in nature, you should seek advice before taking part in any discussion, decision-making or voting.

**207** 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 represent or make decisions based on any private interest. Questions to ask yourself include:

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

**208** If you have been appointed to an outside body by the Council you will be entitled to participate in any Council discussion and voting on matters relating to that body. It should be emphasised, however, that you cannot take part in respect of any matter of a quasi-judicial or regulatory nature relating to or potentially affecting that body. Examples of this are where the body in question:

- is applying to the Council for a licence, a consent or an approval; or
- is making an objection or representation or, in some other way, has a material interest concerning such a licence, consent or approval; or
- is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the Council.

An example of this would be where you have been appointed by your Council to an outside body and that body has submitted an application to the Council for a theatre licence. If you are on the Licensing Committee considering the application you must declare your interest and withdraw from the room while the matter is being considered.

- 209** If you have an interest (whether financial or non-financial) in terms of Section 5, in relation to a particular application, you must declare that interest, take no part in the decision and withdraw fully from the room. The very limited circumstances where you can remain in the room as a representative in line with your Council's procedures are outlined at paragraphs 7.11 and 7.12 of the Code. When you are outside the room you should not do anything which would raise a suspicion that you were communicating with or in any other way trying to influence colleagues involved in the decision, for example by sending them an email or text. If the meeting is online, it is not sufficient to merely switch off your camera or microphone; you must leave the meeting entirely and re-join when you are advised that the discussions and / or voting on the matter has concluded.
- 210** Although you are entitled to hold a preliminary view on a matter in advance of a meeting at which a decision will be taken, you must keep an open mind. This means you must be prepared to consider the merits of all views and representations made about the matter under consideration before making your decision. You must not make your mind up about a particular matter before you have had the opportunity to consider all the evidence – making up your mind in this way is known as pre-judging or pre-determination. You must not make any decision based on any prior discussions or agreements with your political party or group.
- 211** 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
  - a situation where an application has previously been considered by a local review body and is then called to a planning committee.
- 212** 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 application on its merit. 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 you are willing to listen to the merits of an application.
- 213** 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 sit on the committee deciding the application, or another committee giving a view on it. You may be a member of a committee such as a local review body, with very strict procedural rules on how applications are considered. In all of these contexts you should avoid expressing a view which indicates you have closed your mind on the matter.
- 214** If you take part in a meeting at which views in advance of a committee decision at a later date are being gathered (such as a pre-determination hearing) you can express a preliminary view on the matter in line with any policy your Council may have in place for doing so. However, even in this context, you should avoid comments indicating that nothing will change your mind on how you

will vote at any subsequent meeting. If you have made a decision on the same application or a related one you can still take part in the later decision, provided you consider all the relevant material considerations at the later meeting.

- 215** In matters of a quasi-judicial or regulatory nature, it is almost inevitable that you will be lobbied by a number of parties both for and against the issue. You should be mindful of the provisions of Section 6 on lobbying in such situations at all times.
- 216** 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.
- 217** The fact that a member of the public may disagree with a decision, and may feel that the exercise of such a judgement was flawed, is not itself evidence that the Code has been breached. A distinction should be drawn between, on the one hand, the performance of a councillor in exercising their discretion when discharging their decision-making responsibilities and, on the other, a situation where a councillor acted improperly or demonstrated bias (for example if they were biased in favour of one of the parties to the application or participated even though they had a personal interest in the matter).

*A councillor had, prior to her election to the Council, been a member of an anti-windfarm group. Although she had left the organisation before being elected, she remained as the administrator for its Facebook page. The Panel found that, the councillor's prior membership of the organisation, her continuing role as administrator of the Facebook page, and her previous expression of anti-windfarm sentiments, meant that she should have declared an interest at a planning committee when an application for a windfarm was being considered and withdrawn from the meeting. The councillor was found to have breached the Code.*

*A councillor, as a member of the Council's licensing committee, made comments to the press which demonstrated that he had pre-judged a House in Multiple Occupation (HMO) licence application before it had been heard by the committee. The councillor had voted against the licence being granted at the licensing committee meeting and in doing so 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 then took part in a vote about whether the Council should defend its decision to refuse the HMO 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 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.*

*A complaint alleged that a councillor, in his role as a member of a licensing board, stated that he was minded to support an application. This statement was made before the board had heard all submissions, which indicated he had pre-judged the matter. The councillor was also disrespectful towards members of the public who were present as objectors when he questioned them in a confrontational and adversarial manner and was dismissive of their views. Following the licensing board decision, a judicial review seeking of the decision was lodged. The petition, which included an account of the councillor's conduct, was based on the grounds that the objectors were not afforded*

*a fair hearing. The petition was granted by the Court and legal costs awarded against the Council. It was found the councillor had breached the Code.*

*A complaint alleged that a councillor had sent emails from his Council email account to certain members of an area committee, making representations in support of a planning application made by a company of which he was a director. It was found that he had made the representations outwith the committee forum and not in accordance with the relevant Council procedures. The councillor was found to have breached the Code.*

## **Policy and Strategy**

- 218** Many quasi-judicial or regulatory decisions are taken against the background of a policy or strategy which has previously been agreed by the Council or one of its committees. Such policy or strategy (for example, a local development plan) could have been set as a result of a decision being made on an application relating to one you are now considering. As such policies are always under review, you should be mindful that they may be changing while applications are being decided. In such contexts, you can express views on policy and strategic issues while still being able to determine applications relating to them.
- 219** When making statements about emerging policy, you should nevertheless 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.
- 220** 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 like, *"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.
- 221** 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 of Multiple Occupancy. However, you cannot then comment on a specific application, once lodged, in advance of the meeting at which it will be determined.
- 222** You should familiarise yourself with the Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures.

## **Representation**

- 223** Paragraph 7.9 of the Code makes it clear that, if you wish to remain part of the decision-making process, you cannot act as an advocate either for or against an application. If you have done so, you are obliged in terms of paragraph 7.10 to declare an interest and leave the meeting room – this includes leaving the media gallery, the public gallery or any other space within the meeting room.
- 224** In some councils there are procedures under which supporters of, or objectors to, applications can make verbal representations at a meeting. If you have been involved with any such individual

or group, you should consider very carefully whether your participation in such procedures would be helpful. It may be that another representative from such a group could make the representations instead.

### **Paragraph 7.11**

**225** If you intend to make representations before a committee you are a member of, for example, to support your constituents' views, you should advise the Chair and committee clerks at the earliest opportunity. You should ensure your declaration of interest is recorded in the minutes of the meeting. 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. You should only participate to the extent that your Council's procedures and standing orders would allow any other individual to do so.

**226** If you have made representations, you must not participate as a decision-maker in the application, nor attempt to influence employees or lobby other councillors involved in the application.

### **Paragraph 7.12**

**227** If you intend to make representations before a committee you are not a member of, for example, to support your constituents' views, you should only participate to the extent that your Council's procedures and standing orders would allow any other individual to do so.

**228** 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.

### **Site Visits**

**229** The Code recognises that individual Councils will have their own procedures for site visits and does not attempt to be prescriptive about what these procedures 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 the planning legislation. As site visits can form part of the committee process, a degree of formality should apply, and you should behave accordingly. You must follow your Council's own procedures in making site visits as part of the committee process, and must not give any impression during a visit that you have made your decision prior to the committee itself.

### **Enforcement**

**230** 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, you cannot get involved and cannot organise support for 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.

**231** 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.

- 232** Most enforcement matters are delegated to Council employees. While you can ask for updates on how a particular enforcement is progressing, you cannot interfere in any action that is 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, which can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 233** 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 enforcement may indicate that you are supporting or are opposed to any related application.

## ANNEX A

### PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN COUNCILS

#### Principles

- 234** Annex A of the Code outlines the different roles councillors and employees have, and how they should behave towards one another. The protocol is not intended to cover every scenario, but instead should be used as a guide to ensure councillors and employees understand their respective remits and responsibilities.
- 235** The key message, detailed at paragraph 2 of Annex A, is that councillors and employees should work in an atmosphere of mutual trust and respect. Such an atmosphere contributes towards the effective operation of the Council. Neither party should seek to take unfair advantage of their position or influence.

#### Roles

- 236** As a councillor, you are expected to provide strategic leadership and management. This involves:
- setting strategy and policy; and
  - scrutinising and making major, complex decisions that concern the Council as a whole.
- Councillors are not, however, responsible for operational management, which is the planning, organising and execution involved in day-to-day activities.
- 237** Day to day operational management of the Council is delegated to employees, who are answerable to the Chief Executive as the Head of Paid Service, under the [Local Government and Housing Act 1989](#).
- 238** Councillors are required to be involved in certain operational matters when:
- undertaking advocacy work (lobbying or campaigning);
  - representing constituents (case work); and
  - taking decisions on quasi-judicial or regulatory applications (in their role on any regulatory, appeals and appointment committees).
- 239** The Standards Commission's Advice Note for Councillors on Distinguishing Between their Strategic Role and any Operational Work. The Advice Note provides advice about how to balance these operational aspects of a councillors' role with their strategic role. It also provides advice about how to avoid conflicts when undertaking the decision-making role on any regulatory, appeals and appointment committees. The Advice Note can be found at: <https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.

#### Human Resource Issues

- 240** Councillors should not become involved in issues relating to an individual employee's pay or terms and conditions of employment (even if they are a constituent), unless they are serving on a committee delegated to deal with such matters.

#### Public Comment

- 241** Councillors should avoid making any public comments that could bring their Council into disrepute. It should be noted that paragraph 24 of Annex A does not seek to restrict a councillor's

ability to properly scrutinise the performance of the Council or its employees. Instead, it seeks to discourage a councillor from making unfounded public accusations, either about any employee or the Council as an entity.

- 242** Councillors should avoid raising any adverse matters about the conduct or capability of employees in public. This includes repeating or drawing attention towards criticisms of employees publicly. If you have concerns about the conduct or performance of an employee, you should raise it privately with their line manager.
- 243** You should be careful not to make public statements which expressly, or by implication, criticise the actions (or inaction) of an individual employee or identifiable group of employees. You should note that the concept of a public statement is very wide and can cover a variety of scenarios such as published minutes of a Council or committee meeting, a comment on a social media platform, or being overheard in a public area. This provision does not prevent you from scrutinising the performance of a team or service. Instead, it precludes you from making any public criticism, which is personalised in nature, about an individual officer or identifiable group of officers.
- 244** You have a right to receive good quality information from employees on which to base your decisions and undertake your scrutiny role. If you do not feel that any information provided is sufficient, you are entitled to ask for more. In doing so, you should be mindful of being perceived as being publicly critical of any employees. For example, saying *“X’s report is inadequate as they have failed to include a risk assessment”* at a meeting could be perceived as public criticism of X’s conduct or performance. Instead, you may wish to say: *“I do not feel I can make a decision on this matter until a risk assessment has been prepared and included in this report”*.

## **ANNEX B**

### **DEFINITIONS**

There is no Guidance on Annex B as it only contains definitions of terms used in the Code.

## ANNEX C

### BREACHES OF THE CODE

#### Hearings

**245** The Standards Commission, after receiving a report from the Ethical Standards Commissioner, (ESC), can decide to hold a Hearing (usually in public) to determine whether a breach of the Code has occurred and, if so, to determine the appropriate sanction. A policy outlining the factors the Standards Commission will consider when making such a decision on a report referred by the ESC can be found at: <https://www.standardscommissionscotland.org.uk/cases>.

**246** Details of the procedures followed at a Standards Commission's Hearing are outlined in its Hearings Process Guide and Rules, which can be found at: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>. In certain circumstances and following the agreement of parties involved in the Hearing, the Standards Commission may use an Abbreviated Hearing Process.

#### Sanctions

**247** [Section 19 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (2000 Act) obliges a Hearing Panel to impose a sanction, following a finding that the councillor has breached the Code. This can be either a censure, suspension, or disqualification:

**Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the councillor.

**Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the councillor is suspended from attending all meetings of the council. A partial suspension means that the councillor is suspended from attending some of the meetings of the council. The Standards Commission has produced rules on the extent of the activities in which a councillor can engage while they are subject to a period of full suspension (either on the finding of a breach of the Code at a Hearing or as an interim measure while an investigation about their conduct is ongoing). These can be found at:

<https://www.standardscommissionscotland.org.uk/cases/hearing-rules>.

**Disqualification:** Disqualification means that the councillor is disqualified from holding office or standing for election as a councillor for the period determined (which can be up to five years). The disqualification extends to the councillor's membership of any joint committee, joint board or other body on which they are a representative or nominee of the council.

**248** The Standards Commission's policy outlining the factors a Hearing Panel will consider when making a decision on the sanction to be imposed can be found at: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>.

#### Interim Suspensions

**249** Section 21 of the 2000 Act gives the Standards Commission power to impose an interim suspension on a councillor on receipt of an interim report from the ESC about an ongoing investigation. A policy outlining the Standards Commission's approach to interim suspensions can be found at: <https://www.standardscommissionscotland.org.uk/cases/details-of-alleged-breach>.

**250** The decision to impose an interim suspension should not be seen as a finding on the merits of a complaint, nor as a disciplinary measure. Rules on what activities a councillor can engage in when they are subject to either a full or an interim suspension can be found at:  
<https://www.standardscommissionscotland.org.uk/cases/details-of-alleged-breach>.



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