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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 originally came into force in 2003, and was reviewed and re-issued in 2021.

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 hypothetical) and 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 must 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. Separate versions of sections of the Guidance, with the relevant sections of the Code embedded, [INSERT LINK](#).

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.

### Using this Guidance:

- Guidance points are listed under the Headings to the relevant paragraphs of the Code to which they refer.
- Case illustrations are included in italics (with a purple background).

## GUIDANCE

- 1 The revised Code was approved by the Scottish Parliament and is effective from [xx 2021](#).
- 2 This Guidance also comes into effect on [xx 2021](#) and replaces the previous version, which came into effect on 18 December 2018.
- 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.
- 4 The Code's purpose is not to restrict you; rather to help and guide you in maintaining 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 Guidance are directed specifically at councillors and co-opted members of committees and sub-committees. However, although it is good practice for all those who participate in Council decision-making, 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 strongly encourage all their councillors and senior officers to attend. 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. You must, therefore, comply with the provisions of the Code in all situations and at all times where you are acting 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 considering 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 on specific topics by the Standards Commission.
- 11 It should be noted, in terms of the Standards Commission's Policy on the Application of Sanctions [INSERT LINK](#), that ignoring advice and/or training opportunities that may 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 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.
- 13 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 officer may help to clarify your own thinking. If you are found to be in breach of the Code, the fact you took 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.

- 14** You should always try to seek advice at the first opportunity. You should be mindful 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.
- 15** 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.
- 16** The Code should be read as a whole. It may be necessary to cross-reference different provisions.

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

- 17** 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.
- 18** 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.
- 19** 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

- 20** You must treat everyone you come into contact with in the course of your work and 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. While you are entitled to express your views and to disagree with others, you must do so in a respectful way. It should be noted that meeting can include virtual meetings or other forms of remote working via platforms such as MS Teams, Skype and Zoom.
- 21** You should ensure you are familiar with the [Equalities Act 2010](#), 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 Equalities Act, which can be found [INSERT LINK](#).
- 22** 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 councillors are acting as councillors, including representing the Council on official business. 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. You should treat the Code as being applicable in all situations in which you might be objectively perceived to be acting as a councillor. Factors to consider include whether:
- you are clear about the capacity in which are you acting;
  - you describe yourself as a councillor or are otherwise readily identifiable as a councillor in the situation / circumstances;
  - you are on Council premises or at a Council event;
  - you are using a social media platform on which you are identifiable as a councillor;
  - 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 comment on political matters and whether these fall within or outwith the scope of the Council's functions;
  - you are representing the Council or speaking on behalf of the Council.
- 23** In making any decision on whether the Code applies, the Standards Commission will consider how 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.

*A councillor shared an antisemitic article on a Facebook page set up for his re-election campaign. It was noted that there were circumstances when the Code would apply when a councillor was undertaking a political act or making political comment, provided they were also acting as a councillor at the time or could reasonably be perceived as acting as such. In the particular case, the Panel accepted the councillor had not referred to himself as a councillor when sharing the article originally. 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 been acting as such. This was because the 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 purported crux of the article that was shared 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 because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel therefore concluded that the Code applied.*

*A councillor had sent, and encouraged an officer of the Council with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during 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 officer to send the messages during working hours, he was acting in his official capacity.*

- 24** 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.
- 25** 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.
- 26** The Standards Commission has produced an Advice Note for Councillors on the Use of Social Media. This can be found at [INSERT LINK](#).
- 27** 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;
  - 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; and
  - you fully understand that even if you delete your post, it may have been screenshotted or retained in some way, or automatically cached online, and that fully deleting content once it has been shared online is almost impossible to achieve.
- 28** 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 or through information or images posted;
  - you have complied with any policy your Council has produced on the use of social media;
  - 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; and
  - you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions.



*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.*

- 29 As a councillor, your right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) attracts enhanced protection when your comments are political in nature or concern matters of public interest.

**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 respect and consideration;
  - whether making your point in a respectful and constructive manner may have more of an impact in terms of influencing others;
  - whether 'liking', re-posting and re-tweeting comments or posts, or publishing links to other sites could be reasonably perceived in the circumstances 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.
- 30 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 is available on the Standards Commission's website at [INSERT LINK](#).
- 31 It is unacceptable for a public figure such as a councillor to express views which 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. Instead, you are expected to advance equality of opportunity and to seek to foster good relations between different people.

*A complaint alleged that a councillor had shared, on Facebook and 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.*

*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 the complainer, 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 complainer and that he had breached the respect provisions in the Code.*

- 32** 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 [INSERT LINK](#). It should be noted that bullying and harassment (which includes sexual harassment) can be a course of behaviour or a one-off incident. Even if the behaviour is unintentional, it can still be classed as a form of harassment. It is the impact of the behaviour, not the intent, that is the key.

*A complaint alleged that a councillor had behaved in a disrespectful manner 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 message, describing an employee as 'arrogant, lazy, mentally challenged and has 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.*

- 33** 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.

- 34** The requirement to respect all Council employees includes employees of contractors providing services to the Council; employees of trusts or other arms' length external organisations; and employees of any other organisations where it might be reasonably perceived that the Council, and by implication the councillor, has an influence over that organisation.
- 35** 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 [INSERT LINK](#). 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 with the employee's line manager.
- 36** Similarly, as a councillor, while you are entitled to scrutinise how effective the delivery of services has been, as part of a committee's remit, you should be careful 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 identifiable. You should note that the concept of a public statement is very wide and can cover a variety of scenarios such as in published minutes of a meeting, a comment on a social media platform, or being overheard whilst being in a public area. Mutual respect and courtesy between councillors and those who work for, or on behalf of, your Council is essential to ensure the efficient and effective running of local government.

*A complaint alleged that a councillor had become involved in a social care case on behalf of a constituent during which time he had inappropriately sought to influence operational decision-making. In doing so, he lost sight of his overall responsibility to the Council to allow its employees to perform their statutory functions. The councillor had also been discourteous and disrespectful in certain correspondence with Council employees and 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 pages. 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.*

- 37** The words 'Chair' and 'Convener' in paragraph 3.11 of the Code are not restrictive to those specific terms. The provision also applies to anyone holding a similar chairing or convening role. In the interests of brevity, 'Chair' is used in the following parts of this Guidance.
- 38** The role of the Chair in any Council meeting, which includes 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 officers) are allowed to 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. This includes determining the point at which conclusions should be reached. It requires a balanced approach to 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. The role of the Chair in reaching such judgements 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.*

**39** You are accountable for your own individual conduct at all times in terms of the Code when you are in the Chamber or Committee and at meetings where you are representing the Council, irrespective of the conduct of others. Abusive or offensive language and / or unnecessarily disruptive behaviour should not be tolerated. The Chair has the right to rule on the acceptability of language used, or comments made, during the course of a meeting and to take appropriate action as necessary. This can include requiring the withdrawal of a remark, asking for an apology, or any other action required to allow the meeting to properly proceed. 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 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;
- 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 "siege heil" when the Chair of a committee curtailed debate on a motion. It was found that the words "siege 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

- 40 The Standards Commission has produced a separate Advice Note for councillors on Gifts and Hospitality – [LINK HERE](#)
- 41 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. It should be noted that acceptance can include accepting the *promise* of a gift or hospitality.
- 42 '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.
- 43 **Objective test:** you should always consider whether your acceptance of the gift or hospitality would allow an informed member of the public to think it might lead to your being influenced in your judgement on matters. Furthermore, you should also 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.
- 44 You should also not give or offer a gift or hospitality that is intended to induce someone, for example an officer 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.
- 45 An example of bribery might be where a windfarm operator promises to pay community benefit to an organisation in your ward if you grant planning permission in circumstances where it would not otherwise be granted (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).
- 46 You should, therefore, be aware that regardless of any of the provisions in the Code, a gift to someone else which induces you 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 could result in a criminal prosecution against you.
- 47 Where anyone 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 the perception might be that you could still 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.

- 48 Paragraph 3.15 of the Code 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.
- 49 Paragraph 3.19 of the Code recognises that there may be situations where, in a role as a civic leader of your Council (Convener, Provost, and/or their deputies) you will 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 it may cause embarrassment to refuse to accept the gift: after the event at which the gift is presented, however, you should pass the gift to officers and ask that it be registered.
- 50 Similarly, where you are representing the Council in a civic role, you will be expected to accept hospitality associated with that role – a dinner to commemorate the anniversary of an event, for example. If you are invited to such events as a result of your civic role, you can accept the invitation. You should however register the hospitality, making it clear the capacity in which you attended.
- 51 The changes to the Code on gifts and hospitality are designed to avoid any perception that councillors are 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).
- 52 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 is intended to ensure the Council can take action if it appears the same individual or organisation is attempting to influence its elected members and decision-making.

*A complaint alleged that a councillor had failed to declare hospitality received from a recipient of planning permission who was to make further applications for the same development, during a site visit. 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 had 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, and therefore it was held to be a breach of the Code.*

## Confidentiality

- 53** You have a statutory right, subject to certain statutory exemptions, to Council information under the Access to Information provisions of the [Local Government \(Scotland\) Act 1973](#) and the [Freedom of Information \(Scotland\) Act 2002](#). 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.
- 54** You may be provided with some documents and information, in your capacity as a councillor, for which it is legitimate for a Council to require this to be treated in a confidential way. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing and integrity of a Council, it is essential that you respect the provisions at paragraphs 3.21 to 3.23 of the Code. 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, or is likely to resolve, to treat it as exempt information in terms of the [Access to Information provisions](#) of the Local Government (Scotland) Act 1973;
  - 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.
- 55** 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 officers 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 and therefore, by disclosing publicly the fact that their fellow councillor was under investigation, the councillor was found to have breached the Code.*
- 56** You are also a data user and must not breach the data protection principles when handling information. Council information provided to you must only be used by you for the purpose for which it was provided. Information so held must therefore 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.
- 57** 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 both you and / or the Council.

- 58 You must not provide the media with 'off the record' briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the Council and its committees.
- 59 Sometimes it is a matter of timing, in that information may eventually be released into the public domain. 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.
- 60 In the case of other documents and information, you should seek advice if you are in any doubt as to whether they are confidential. You should exercise judgement regarding what should or should not be made available to outside bodies or individuals.
- 61 As a councillor, you are in a position of trust and members of the public 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.
- 62 If you are considering disclosing any information which could reasonably be regarded as 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.
- 63 You should be aware of the provisions of the data protection legislation. If you hold personal information (such as details of constituent enquiries), you may require to be registered as a data controller under data protection legislation. 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.
  - You must not share this information with anyone without the consent of the person giving the information. If a constituent or other member of the public asks you to resolve an issue you are allowed to contact officers to attempt to resolve the issue on behalf of your constituent.
  - 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 an employee of the Council to a third party. It was found that the councillor had breached the Code by disclosing to a third-party information about the officer 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

- 64 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 written policies on such matters as the use of IT and other equipment for personal and official purposes, support for you and fellow councillors, and protocols on communications such as press releases. You should make yourself aware of such policies and protocols and familiarise yourself with their contents.
- 65 The Code now explicitly forbids the 'imprudent' 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 in such a way that money is wasted. An example of this would be printing documents unnecessarily.
- 66 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](#), as amended by the [Local Government Act 1988](#), which are as follows:
- '2. Prohibition of Political Publicity*
- (i) A local authority shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.*
- (ii) 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 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 is prohibited by this section from publishing themselves.'*
- 67 Whilst 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.
- 68 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 consenting or 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 for carrying out official Council business or for 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 use of Council facilities.*

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

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

- 69** As a councillor, you must not only avoid conduct which seeks to further your own particular interests, or the personal interests of others, but you must also avoid conduct that may give the impression you are seeking preferential treatment. 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 was 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 officers to act in a way that suggests you are seeking preferential treatment for yourself or others; and
  - whether you are asking officers to act in any way which 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.
- 70** 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 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 or information from you. You should not assume that employees will be aware, or will remember, any personal interest you have in a matter, when you are seeking their advice or information. It is important that you identify any connection as it may be that it is inappropriate for the officer to provide you with advice 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).
- 71** [Section 112 of the 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 and, if you attend a meeting related to these matters, you are required to disclose that this legislation applies to you, and you cannot vote on them. It is a breach of the Code to do so, and also constitutes 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 officers 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 and that he was in breach of the Code.*

*A councillor, as a partner of a firm, submitted a planning application for a wind turbine. The Panel heard that the councillor had 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, he put forward a number of points in favour of the planning application. The Panel concluded that members of the public would reasonably conclude that, by sending the emails from his council email address and signing off as a councillor, he was using his position as a councillor to seek preferential treatment. The councillor was found to be in breach of the Code.*

## **Appointments to Outside Organisations**

- 72** 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 will potentially include personal liabilities and may also raise questions of conflict of interest. Conflicts of interest 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 Arm's Length External Organisations (ALEOs). The Advice Note is available on the Standards Commission's website at [INSERT LINK](#).

*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.*

- 73** 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 of the Code. However, membership of statutory joint boards or joint committees composed exclusively of councillors does not require to be registered or declare as an interest.
- 74** If you are appointed or nominated by the Council to an outside body, you will assume legal responsibilities, as an individual, if you are a director or a trustee. As a director of a company, by virtue of the Companies Acts, and / or as a charity director or trustee under the [Charities \(Scotland\) 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. 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 a member. You will have to act in the outside body's best interests and will be bound by the provisions in any code of conduct it has adopted, when acting as a member of it.

- 75** If you have any doubts about your responsibilities or concerns about the impact of an appointment to an outside body on your ability to abide by provisions in the Code, you should seek early advice in advance of accepting appointment or meetings at which the appointment is to be made. Advice can be sought from Council officers or, if appropriate, from officers of the outside body.

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## SECTION 4: REGISTRATION OF INTERESTS

- 76 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.
- 77 The Register is intended to be a public record of those interests which you know you have that might, by their nature, be likely to cause conflicts with your role as a councillor.
- 78 The fact that you subsequently declare the interest at a specific meeting would not necessarily be a defence to a complaint that you breached Section 4 of the Code by failing to register it if required to do so. Accordingly, you should be as transparent as possible in the interests that you register.
- 79 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 2017, your Register should cover the period commencing May 2016 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.'
- 80 You should be aware that the **Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003** (2003 Regulations) [REFERENCE WILL BE UPDATED WHEN REGULATIONS ARE UPDATED] indicates that officers of the Council must retain the record for a period of five years after the date a councillor ceases to be in office.
- 81 In terms of the 2003 Regulations, you are required 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 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.
- 82 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 should, however, always be mindful of the need to ensure 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 and not just an abbreviation.

### Category One: Remuneration

- 83 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, the question is only whether you have received remuneration. This means paid work, no matter how casual or trivial in nature, requires to be registered.
- 84 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 you have a 'customer service role' or that you are a 'finance officer'.

- 85** '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' will include such things as companies, limited liability partnerships (LLPs) and, potentially, Scottish Charitable Incorporated Organisations (SCIOs). 'Unincorporated associations' would include clubs, societies, and such things as fishermen's mutual associations. The key as to whether the 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.
- 86** Paragraph 4.5 of the Code confirms you do not have to register any work which 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 comprised solely of councillors.
- 87** 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 which 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**

- 88** Where you have been appointed as a member of outside bodies (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).
- 89** There is no need to register being a councillor or a member of a joint board, a joint committee or of COSLA.
- 90** 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 be registered under Category One: Remuneration.

#### **Category Three: Contracts**

- 91** This category is for where you as an individual, or an undertaking you have a substantial interest in (see below) has an upcoming or ongoing contract with the Council for the supply of goods and services. 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**

- 92 'Donations' towards election expenses would include those received via crowdfunding, if individual contributions (including all those from the same source) are more than £50.

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

- 93 In relation to 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.
- 94 In terms of paragraph 4.19 of the Code, you are required to provide the Council's Monitoring Officer with the full address of the houses, land and buildings. What is published on the Council's website or made publicly available does not necessarily require to be as detailed (and it is sufficient for you to just identify the Council ward - for example, you could state that you own a residential property in the West End ward, Dundee).

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

- 95 '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.
- 96 You will 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.
- 97 You will 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.
- 98 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.
- 99 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.
- 100 In relation to paragraph 4.21 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**

- 101** Parts 40 to 52 of this Guidance discusses the provisions in the Code on Gifts and Hospitality, and that the default position now is you should refuse these, except in very limited circumstances. However, if you have accepted gifts and hospitality under previous versions of the Code which allowed you to accept them, these should remain on your Register.

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

- 102** 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. An example of this might be membership of a society. You should consider whether such membership might lead members of the public to reasonably think 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.
- 103** 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 also needs to be declared, if the objective test is met, in terms of paragraph 5.5 of the Code.
- 104** 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 are not an exhaustive list of potential non-financial interests.

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

- 105** 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. 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 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.
- 106** 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, partner, parent, child and / or any other relative you live with would be considered a close family member. 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"*.
- 107** 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, should have registered her interest in it. She was found to have breached the Code.*

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

**108** 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.

**109** Should you be in any doubt about the implications of your participation in a Council discussion or decision, you should seek the advice of the Council's legal officers before taking part.

### **Stage 1: Connection**

#### **Paragraph 5.1**

**110** 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 people close to you - will sometimes mean that you have a connection to a matter in which your Council is involved in some way.

**111** Such connections will not always amount to an interest which you should declare. However, you should always consider whether, in the context of your role as a councillor, there is the possibility that they do. 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**

**112** 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, flatmate, close friend, parent or child are likely to result in a connection.

**113** It is impossible to list every type of connection you might have with a matter involving the Council. However, some common examples would include:

- Owning a house which is affected by Council proposals such as demolition or compulsory purchase, or might be affected by proposals by others applying for a licence or consent from the Council;
- The Council considering some form of financial assistance which 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 which is either 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.

### Paragraph 5.3

**114** 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.

### Paragraph 5.4

**115** 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.

**116** 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 meeting if you are in arrears of two months or more of Council tax or three months in the case of community charge. In those circumstances, you are not entitled to vote on the matter.

**117** Similarly, whilst being a Council house tenant will not be a connection generally, there are circumstances where you cannot vote on Council house matters in your ward by law. 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.'*

**118** 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 the legislation does not prevent you from taking part, 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 applicant does not reside there, but they are a friend or close relative of yours.

**119** 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.

**120** Membership of a body you have been appointed to by the Council, as its representative, would not normally be a connection. However, this does not apply where the matter being discussed by the Council or at one of its committees or sub-committees is quasi-judicial or regulatory in nature. Examples of the types of matters which involve quasi-judicial or regulatory decisions are provided in Section 7 of the Code (Taking Decisions on Quasi-Judicial or Regulatory Applications). An

example of where you would have a connection as a member of a different body would be where the other body has applied for a licence or consent from the Council, or is an objector to such an application – whether or not you actively participated in the decision by the other body to make the application or objection.

- 121** 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. You should nevertheless be aware that you may still have a personal conflict by way of your actions, connections (other than your membership of the outside body or ALEO), or legal obligations.
- 122** An example of where you have a personal conflict by reason of your actions could be where you have stated during a meeting of an ALEO that the ALEO requires further financial support and have then voted in favour of applying to your Council for more funding. If your political group subsequently makes it clear that its members are to vote, at a forthcoming Council meeting, to reject the funding request, then it is likely that your actions would result in a personal conflict that would prevent you from taking part in the discussion and decision-making at the Council meeting. This is because a member of the public, with knowledge of the relevant facts, may reasonably perceive you to be personally conflicted.
- 123** A further example 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.
- 124** An example of where you have a personal conflict by way of a connection (other than your membership of the outside body or ALEO) in this context 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.
- 125** Examples of where your legal obligations might mean you have a personal conflict would include where you are either a director of a company or a charity trustee. Both the Companies Acts and the Charities (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. If you are in doubt as to what your legal obligations are to the outside body, you should seek advice from its legal advisers.

## **Stage 2: Interest**

### **Paragraph 5.5**

- 126** 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.
- 127** 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.
- 128** 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.

- 129** 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. An example 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.
- 130** Section 3 sets out the very limited circumstances in which you would accept gifts and hospitality. The test set out at 3.16 is very closely related to the objective test in this section, and it would be unusual for a gift or hospitality you had properly accepted to be so significant that it would constitute an interest.
- 131** When making a declaration and / or deciding whether or not to do so you should consider whether the information you are giving is sufficient 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.
- 132** You must disclose or declare your personal interests both in formal and informal dealings with Council officers and other councillors, not just in formal Council or committee meetings. This is an important consideration especially when you are seeking advice from Council officers or other sources. You should not assume that officers and others will know or remember what your interests are.
- 133** You should be mindful of the need to protect the confidentiality of another person's business or financial interests when making a declaration. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

*A complaint alleged that a councillor who had been appointed to represent the Council on a stakeholder group had participated in a discussion regarding a review of child health and medical services in the Council area at a meeting of the stakeholder group. This was despite being aware that his employer, who was a Member of the Scottish Parliament, had an interest in retaining certain services under consideration. The employer had previously raised the issue in the Scottish Parliament and had made public statements in the press. The councillor had failed to apply the objective test as, had he done so, he would have realised that in raising issues and concerns that were similar to those raised by his employer, a member of the public might have perceived him as being influenced by this 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. Therefore, her interest should have been registered and 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, which included 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 officers 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 officers when advice is sought so councillors can be assured that advice given 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**

- 134** 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 why you had not realised you had an interest at the outset of the meeting.
- 135** Thereafter, when the item is being considered, you should leave the room. It is not sufficient for you to retire to the back of the room or the public gallery (except in the very limited circumstances described in paragraph 7.11 of the Code in relation to certain procedures at regulatory meetings). 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.
- 136** 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 remote contact by text or email with your councillor colleagues whilst

they are engaged in 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, they merely switched off their camera, and were therefore still able to see and hear the meeting. The councillor then proceeded to send multiple messages to their councillor colleagues on the committee, applying pressure on them to approve the application. The Panel found that the councillor had breached the Code.*

- 137** 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 the item proceeds to be discussed or debated as a substantive issue.
- 138** 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. The Advice Note is available on the Standards Commission's website at [INSERT LINK](#).
- 139** 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**

- 140** You may wish to think about whether you should indicate why you have considered making a declaration but have chosen not to, on the grounds that your connection does not amount to an interest. It may be, for example, that you are aware that other people know of your connection to the matter. If that is the case, then you may wish to outline the relevant facts so the public understand why your connection does not amount to an interest.
- 141** In those circumstances you might want to make a transparency statement. For example, you could state 'I have a connection to this item by reason of... However, I have applied the objective test and do not consider I have an interest to declare because...'. If you think it would be helpful you can ask that the committee staff 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.

#### **Paragraph 5.8**

- 142** The Standards Commission can consider requests for dispensations in certain circumstances, either in relation to you as an individual or to a class or description of councillors who are affected by a particular category of interest.
- 143** 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, setting out

in 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.

**144** The Standards Commission will respond as soon as it reasonably can after receipt of all information and will normally be able to provide a response within 14 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 and, therefore, applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.

**145** If a dispensation is granted, you should consider stating this at the meeting, and asking for this to be recorded in the minutes.

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

**146** As a councillor you will be approached by those wishing to make their views known. This is perfectly legitimate, and should be encouraged, in that it is an essential part of the democratic process that any individual should be allowed to lobby a Council or councillor.

**147** Paragraph 6.1 of the Code sets out some of the ways in which you, as a councillor, may be lobbied. You may be lobbied by a constituent on a personal issue, such as a housing matter. Equally, as part of your role in promoting community engagement and capacity building, you may become involved in a particular local issue. Lastly, 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.

**148** It is easy for the lines between these categories to become blurred, particularly when you are dealing with regulatory applications, such as planning or licensing. It is important to recognise 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 which fall outwith Council procedures, and where employees are not involved, are perceived as undermining this.

**149** This risk is particularly high where, normally, the lobbyist would be expected to deal with Council officers at a particular stage of a process. If you are seen as facilitating this type of approach, there may be a perception that you have allowed the lobbyist special access to the decision maker, bypassing the officers. For this reason, if you are approached by anyone about a pending decision of any kind, you should pass any information that you consider relevant to the officers dealing with the matter, at the earliest opportunity, to ensure that they are aware of it.

**150** Discussing the information you have received from lobbyists with officers will give you an opportunity to establish if it something that they were not 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 which is favourable to their case but without giving you a complete picture. Officers can give you professional advice on what may or may not be a relevant consideration in respect of any decision you will be making.



- 151** Even if you do not sit on a regulatory committee that is taking the relevant decision, there are still likely to be issues under the Code which you will need to consider. In particular, it would be a breach of the Code for you to lobby officers or members of the regulatory committee either on your own behalf, or on behalf of others.

## **Constituent Enquiries**

- 152** Your representative role in dealing with constituent enquiries is a key part of your job, 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 detailed at 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. In those circumstances, you should politely inform the constituent that is the case.
- 153** It is legitimate for you to take up a constituent's enquiry with the relevant officer, although you should at all times follow the Council's policies on the processing of a constituent's 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 [INSERT LINK](#)).
- 154** 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 the constituent make use of the Council's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the Scottish Public Services Ombudsman, if necessary and as appropriate.
- 155** Inevitably there will be occasions where the constituent looking for your help is also a Council employee. Whilst 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**

- 156** 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. That should be distinguished from a single-issue campaign about a regulatory decision.

## **Lobbying**

- 157** Private meetings with lobbyists - whether professional lobbyists or members of the public seeking your support - can undermine public trust in decision-making processes, and 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 could also involve offers of hospitality, which could lead to a breach of the gifts and hospitality provisions at paragraphs 3.13 to 3.20 of the Code.



- 158** 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.
- 159** 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.
- 160** 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?
  - 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**

- 161** 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 regarding 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 all the evidence. However, you can:
- make it known to officers what representations you have received;
  - assist constituents in making their views known to the relevant officer;
  - seek factual information about the progress of a case; and / or
  - advise those that are lobbying who they can contact (i.e. the relevant officer or a councillor who is not on the decision-making committee).
- 162** Community benefits that are not required to enable a proposal to proceed cannot be taken into account in determining an application. In particular, the promise of money to the local community (e.g. from wind turbines) can never be a consideration in deciding a planning application. This runs contrary to policy 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 officer 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 officers 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.*

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

### Introduction

**163** The Key Principles set out at Section 2 of the Code, in particular Integrity, Objectivity, and Openness, are of particular importance where you, as a councillor, are taking decisions on quasi-judicial or regulatory applications. 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. Many of the decisions will be controversial, and a failure to observe the terms of the Code can result in a challenge against the Council's decision, with the 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 the Council will still incur costs.

### Quasi-judicial or Regulatory Decisions

**164** The list of types of decision which are quasi-judicial or regulatory in nature under paragraph 7.3 of the Code is illustrative and not exhaustive. You should note that such decisions are not solely limited to planning or licensing matters. 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.

**165** When making quasi-judicial or regulatory decisions, you must do so objectively and with an open mind. Factors to consider 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?
- Have you taken account of advice from Council officers 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?

**166** If you have been appointed to an outside body by the Council you will be entitled to participate in discussion and voting on matters relating to that body in other committees. It should be emphasised, however, 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 instance of this would be if 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. In that instance, 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.

**167** If you have an interest 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 paragraph 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.

- 168** 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.
- 169** 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. If, however, you say ‘some people find wind farms ugly and noisy so I will need to be persuaded we should allow more in this area’, you should not be accused of having pre-judged the application as you have demonstrated you are willing to listen to the merits of an application.
- 170** You may come into contact with quasi-judicial or regulatory matters in your role as a councillor in a number of ways. You may be contacted by a constituent, either in person or by email, on 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.
- 171** If you take part in a meeting which is gathering views in advance of a committee decision at a later date, 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 on doing so. However, even in this context, you should avoid comments which indicate that nothing will change your mind on how you will vote at any subsequent meeting.
- 172** 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.

*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) license application before it had been heard by the committee. The councillor had voted against the license being granted at the licensing committee meeting and in doing so had failed to avoid the appearance of improper conduct. This would have reduced the risk of the Council's decision being legally challenged. When the decision was 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 officers 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 petition for judicial review was made seeking the reduction of that decision. The petition, which included an account of the conduct of the councillor, 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 in 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**

- 173** 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 could have been set through a decision being made on an application related to the one you are now considering. Many policies, such as those contained in local development plans, are in a continuous state of review and renewal. You should be mindful, therefore, that new policy may be shaped at the same time as applications are decided.
- 174** In such contexts you are able to express views on policy and strategic issues without compromising your ability to decide applications related to them. However, you should, when making statements about emerging policy, be mindful that the Council must be able 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 information.
- 175** 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 something like '**nothing** would convince me that the site in question should be developed for housing', as this could indicate that you had entirely closed your mind on the matter before being in possession of and considering all relevant information.

- 176** 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, for example, 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, before the meeting to determine it.
- 177** As a member of a quasi-judicial or regulatory committee you should make a decision in the overall public interest. You should not represent any private interest.
- 178** You should familiarise yourself with the Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures which can be found at <http://www.gov.scot/Topics/Built-Environment/planning/Roles/Planning-Authorities/Documents>

## **Representation**

- 179** 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, in terms of paragraph 7.10 of the Code you should normally declare an interest and leave the meeting room.
- 180** In some councils there are procedures whereby supporters of, or objectors to, applications can make verbal representations at a meeting. If you have been involved in such matters, you should consider very carefully whether your participation in such procedures would be helpful or if, for example, another representative of a group of objectors you have been involved with could make the representations equally well.

## **Paragraph 7.11**

- 181** If you are a member of the committee considering an application upon which you intend to make representations, for example, to support your constituents' views, you should make this position clear as soon as possible to the chair of the committee and officers. Your declaration of interest should be recorded in the minutes of the meeting. When making such representations, you should do so from where any member of the public or applicant would do, and not your usual seat in the committee chamber. You should only participate in such procedures to the extent that your Council's procedures and standing orders would allow any other individual to do so.
- 182** If you have made representations, you must not participate as a decision-maker in the application at hand, nor attempt to influence officers or lobby other councillors involved in the application.

## **Paragraph 7.12**

- 183** If you are not a member of the committee considering an application upon which you intend to make representations, for example, to support your constituents' views, you should only participate in such procedures to the extent that your Council's procedures and standing orders would allow any other individual to do so.
- 184** Having made any such representations, while the application is being discussed and determined, you should then follow your Council's policies and procedures for parties appearing before

committees. 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 in the public gallery, you should not do anything from there which would lead the public to suspect you of trying to influence the decision in any way.

*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.*

## Site Visits

**185** 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. However, when attending site visits, you must follow your Council's own procedures for such visits. You should be aware that such site visits form part of the committee process, and as such, a degree of formality will apply. In any event, you should avoid giving the impression during such a visit that you have made your decision prior to the committee itself. Some Councils will insist that you attend such 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.

## Enforcement

**186** You must not organise support or opposition, lobby other councillors or put pressure on planning officers to either take, or not take, investigative or enforcement action. This applies to all councillors, whether members of the planning committee or not. The parts of this Guidance relating to Section 6 (Lobbying and Access) and constituent enquiries apply equally to quasi-judicial and regulatory matters.

**187** Most enforcement matters are delegated to officers to carry out. Whilst you can ask for updates on how a particular enforcement is progressing, you should be mindful of your obligation not to interfere in operational matters. 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 [INSERT LINK](#).

**188** 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 implacably opposed to any related applications.



## ANNEX A

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

#### Roles

- 189** As a councillor, you are expected to provide strategic leadership and management. This involves setting strategy and policy, 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.
- 190** Day to day operational management of the Council is delegated to employees, who are answerable in the first instance to the Chief Executive as the Head of Paid Service, under the [Local Government and Housing Act 1989](#).
- 191** 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 role on any regulatory, appeals and appointment committees).
- 192** The Standards Commission's Advice Note for Councillors on Distinguishing Between their Strategic Role and any Operational Work [INSERT LINK](#) 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.

#### Public Comment

- 193** Councillors should avoid raising any adverse matters about the conduct or capability of employees in public. This includes repeating or purporting to repeat 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.
- 194** 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*".

#### Employees supporting councillors

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



## ANNEX B

### BREACHES OF THE CODE

#### Hearings

- 196** 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 [INSERT LINK](#).
- 197** 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 [INSERT LINK](#). In certain circumstances and following the agreement of parties involved in the Hearing the Standards Commission may use an Abbreviated Hearing Process.
- 198** The decision as to whether or not a breach of the Code has occurred will normally be made by consensus of the three Members comprising the Hearing Panel. However, in the event that no consensus can be reached, the decision can be taken by majority.

#### Sanctions

- 199** Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (2000 Act) obliges a Hearing Panel to impose a sanction. This can be either a censure, suspension, or disqualification.
- 200** 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 [INSERT LINK](#).

#### Interim Suspensions

- 201** 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 in relation to interim suspensions and how decisions are reached on them has been developed and can be accessed here [INSERT LINK](#). A useful flowchart outlining the interim suspension process can be found here [INSERT LINK](#).
- 202** 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. Guidance on what activities a councillor can engage in when they are subject to either a full or an interim suspension can be found here [INSERT LINK](#)



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