

CITY AND COUNTY OF CARDIFF DINAS A SIR CAERDYDD

STANDARDS AND ETHICS COMMITTEE: 26 JANUARY 2009

REPORT OF THE MONITORING OFFICER AGENDA ITEM: 7

DRAFT GUIDANCE FROM THE OMBUDSMAN – MEMBERS’ CODE OF CONDUCT

Reason for this Report

1. To inform the Committee that the Public Service Ombudsman for Wales has issued draft guidance on the Members’ Code of Conduct and is consulting on it. The Ombudsman requires that any response to the consultation be submitted by the 12th February 2010. The Ombudsman’s covering letter and draft guidance is attached as Appendix A.

Background

2. As a principle Monitoring Officers and members should welcome guidance from the Ombudsman. However, the challenge is to provide guidance that will be sufficiently robust to give Members and Monitoring Officers a very clear indication of the Ombudsman’s approach to complaints about breach of the Code. As currently drafted it is considered that the draft guidance does not fully meet that challenge.

Issues

3. The Committee now has the opportunity to respond should the Committee so wish. The Association of County Secretaries and Solicitors, to which the Monitoring Officer and Deputy Monitoring Officer belong, is convening a meeting to consider the draft guidance on the 22nd January 2010 and the Committee will be given an update at the meeting.

Legal Implications

4. There are none arising from this report.

Financial Implications

5. There are none arising from this report.

RECOMMENDATION


That the Committee consider the draft Guidance and provide the Ombudsman with a response.

Kate Berry
Monitoring Officer and City and County Solicitor
20 January 2009

Our ref: PT/SMH

Ask for: Susan Hudson

Your ref:

 01656 641153

Date: 30 November 2009

 consultation@ombudsman-wales.org.uk

(See over for list of consultees)

Dear Colleague

Code of Conduct - Draft Guidance from the Public Services Ombudsman for Wales

I am consulting on the statutory guidance that I intend issuing under Section 68 of the Local Government Act 2000 in respect of the Model Code of Conduct. The draft guidance (enclosed) draws heavily on the guidance issued by Standards for England on the English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. It also seeks to address issues raised in the responses received to my preliminary consultation with monitoring officers earlier this year.

I would be grateful if Chief Executives of County/County Borough Councils and Clerks of Town/Community Councils could share the content of the draft guidance with the members of their authority.

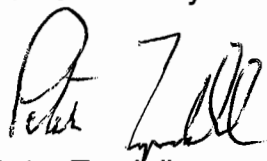
It is intended that the final guidance will be published in March 2010. However, in the interim period, monitoring officers may wish to refer to the draft guidance when advising members on the Code.

Responses to this consultation:

- should be submitted **by Friday, 12 February 2010**
- **preferably** by e-mail: consultation@ombudsman-wales.org.uk,
- but can also be sent to:

Susan Hudson
Policy & Communications Manager
Public Services Ombudsman for Wales
Pencoed
CF35 5LJ

Yours sincerely



Peter Tyndall
Ombudsman

Distribution List for Code of Conduct Guidance Consultation:

Adjudication Panel for Wales

Association of Council Secretaries and Solicitors

County & County Borough Councils':

- Chief Executives
- Monitoring Officers
- Standards Committee Chairs

Fire Authorities':

- Chief Executives
- Monitoring Officers
- Standards Committee Chairs

Minister for Social Justice and Local Government, Welsh Assembly Government

National Park Authorities':

- Chief Executives
- Monitoring Officers
- Standards Committee Chairs

One Voice Wales

Police Authorities - Monitoring Officers (for information)

Town/Community Councils - Clerks

Welsh Local Government Association



The Code of Conduct

DRAFT

**Guidance from the
Public Services Ombudsman for Wales**

Preface



This guide from the Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct introduced in 2008. The Code of Conduct applies to all members and co-opted members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. All members are required to sign up to it as part of their declarations of acceptance of office. The Code of Conduct does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate code of conduct applying to officers of local authorities in Wales.

The following pages aim to provide you with a general understanding of the Code of Conduct and its requirements. Section 1 provides an introduction, while Section 2 outlines your obligations under the Code of Conduct, referencing specific paragraphs of the Code of Conduct for further information. Sections 3 and 4 deal with general issues surrounding interests, and aim to clarify a number of provisions which you will find in Part 3 & 4 of the Code of Conduct. You can obtain a copy of the Code of Conduct by downloading it from your authority's website or contacting the monitoring officer.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your monitoring officer where appropriate and to make a decision as to the most suitable course of action.

You will as a member be offered training on the Code whether by a monitoring officer or from a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and its interpretation.

In issuing this advice I am very conscious of the importance of standards in ensuring the future health and effectiveness of our democratic institutions. It is important that we should all work collaboratively to drive up standards and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so we can build public confidence in our democratic institutions and promote good governance for the benefit of the people of all of our communities.

Peter Tyndall
Public Services Ombudsman for Wales
November 2009

This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 the Local Government Act 2000 for elected, co-opted and appointed members of:

- county and county borough councils;
- community councils;
- fire and rescue authorities, and
- national park authorities

in Wales.

NB Members of police authorities in Wales must comply with the English Code of Conduct and should have regard to the Guidance issued by Standards for England which is available from its website: <http://www.standardsforengland.gov.uk> or by contacting the organisation via one of the following methods:

Telephone: 0161 817 5300

Fax: 0161 817 5499

Minicom: 0161 817 5449

Email: enquiries@standardsforengland.gov.uk

Writing to: Standards for England

Fourth Floor

Griffin House

40 Lever Street

Manchester

M1 1BB

United Kingdom

Acknowledgement

This guidance draws heavily on the guidance prepared and issued by Standards England on the English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. It also reflects responses to the consultation undertaken by the Ombudsman. I am grateful to Standards for England for their agreement to the use of their work.

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1. Introduction

The Local Government Act (2000) created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

Authorities were expected to adopt the Code of Conduct in its model form, without amendment. This was intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public. It also minimises the legal risk which might have arisen if your authority had adopted additional provisions which were unenforceable.

The Principles

The Local Government Act empowered the National Assembly to issue principles to which members must have regard in undertaking their roles. The current principles were set out in a statutory instrument¹ and are detailed below.

1. Selflessness

Members must act solely in the public interest. They must never use their position as members to improperly confer advantage on themselves or to improperly confer advantage or disadvantage on others.

2. Honesty

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

3. Integrity and Propriety

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

4. Duty to Uphold the Law

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

5. Stewardship

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

¹ The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

6. Objectivity in Decision-making

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

7. Equality and Respect

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

8. Openness

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

9. Accountability

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

10. Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Code of Conduct, and failure to comply with the Principles is not of itself, therefore, evidence of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements at paragraphs 4 (a) and (b) in the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and the Ombudsman encourages members to have regard to them at all times.

Deciding when the Code of Conduct applies to you

The Code of Conduct applies to you:

1. Whenever you act in your official capacity, including whenever you conduct the business of your authority or act, claim to act, or give the impression you are acting, in your official capacity or as a representative of your authority.
2. At any time, should you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute or if you use your position to gain an advantage or avoid a disadvantage for yourself or any other person or if you misuse your authority's resources.

Where you act as a representative of your authority on another relevant authority, or any other body including a Police Authority, you must, when acting for that other authority, comply with their Code of Conduct. When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Committee (see its website: www.charity-commission.gov.uk).

If you are acting as a representative of your authority on another body, for example as a school governor, which doesn't have a code of conduct relating to its members, you must comply with your authority's own code unless it conflicts with any legal requirements that the other body has to comply with.

2. General obligations under the Code of Conduct

Equality

See Paragraph 4(a)

You must carry out your duties in a way which promotes equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age, and religion or belief.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- **Direct discrimination:** treating people differently because of their gender, race, disability, sexual orientation, age, and religion or belief.
- **Indirect discrimination:** treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age, and religion or belief, but which disproportionately disadvantages them.
- **Harassment:** engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age, and religion or belief, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- **Victimisation:** treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Equality laws also impose positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct

Treating others with respect

See Paragraph 4(b)

You must treat others with respect.

Political groupings are common in authorities, and may draw their members either from formal political parties or, as is often the case in Wales, from groups of independent members. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect. It is essential that members avoid having debates which go beyond robust. Elected members should ensure that political points are made in ways which, while they may be forceful, are nonetheless respectful of their opponents. There is a clear distinction between robustly engaging in debate about policies or programmes, and engaging in personal attacks on individuals.

However, the dividing line is inevitably blurred by debate about the qualities of office holders, and whether they can offer the leadership or stewardship demanded by their roles. Ultimately, there must be a measure of reasonableness in critique, and it should be confined to material issues, and avoid personal attacks and offensive behaviour.

The chairs of meetings have an important role to play in managing debate within reasonable parameters, and those charged with chairing meetings should take advantage of any support and training available to enhance their skills and expertise. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

Bullying and intimidation

See Paragraph 4(c)

You must not bully any person including other councillors, council officers or members of the public.

Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

Members need to ensure that their behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances but there is no question that the relative seniority of the officer will be a factor in many cases. Very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this.

It's also evident that there are appropriate channels for expressing concern about the performance of an officer, and doing so in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. It is important that you raise issues about poor performance in the correct way and proper forum. However, if your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code of Conduct.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

Compromising the impartiality of officers of the authority

See Paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority.

You should not approach or pressure anyone who works for, or on behalf of, the authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Disclosing confidential information

See Paragraph 5(a)

You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:

- You have the consent of the person authorised to give it.
- You are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.

- The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
 1. the disclosure must be reasonable
 2. the disclosure must be in the public interest
 3. the disclosure must be made in good faith
 4. the disclosure must be made in compliance with any reasonable requirements of your authority.

In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:
 - Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
 - Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
 - The identity of the person or body to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
 - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
 - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
 - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
 - Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, which has either happened in the past, is currently happening, or is likely to happen in the future:
 - (a) A criminal offence is committed.
 - (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
 - (c) A miscarriage of justice occurs.
 - (d) The health or safety of any individual is in danger.
 - (e) The environment is likely to be damaged.
 - (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.
3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.
4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Preventing access to information

See Paragraph 5(b)

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 0845 630 6060.

Any information that you produce in your official capacity is likely to be subject to the disclosure requirements of the Freedom of Information Act, and you may be required to release it in response to a request. Failure to comply with a legitimate request will be a breach of the code.

Disrepute

See Paragraph 6.1(a)

You must not behave in a way which would bring your office or authority into disrepute at any time.

As a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your office or your authority. Dishonest and deceitful behaviour may bring your authority into disrepute, as may conduct which results in a criminal conviction, such as dishonest, threatening or violent behaviour.

In addition to paragraph 6(1)(a), paragraph 12 is also relevant to the proper use of your position. Paragraph 12 supports your role as a community advocate, representing and speaking for the concerns of your community, even where you have a prejudicial interest. This right applies to you at meetings where you have a statutory right to speak or you are provided with the same opportunity to speak as ordinary members of the public would be allowed. If your authority does not allow members of the public to attend the relevant meeting for the purpose of speaking to it, paragraph 12 will not apply to you unless you have a statutory right to speak on the matter.

You must leave the room or chamber immediately after you have made the representations, given your evidence, or answered questions, and make no further attempt to influence the decision. If the meeting decides that you must stop speaking to the meeting, even if you have more to say, you must stop and leave the room. If you fail to comply with the meeting's direction or paragraph 12 of the Code of Conduct, you may be found to have improperly influenced the decision.

Reporting breaches of the Code

See paragraph 6(1)(c)

You must report breaches of the Code to the Ombudsman and to your monitoring officer. If you are in doubt as to whether a breach has occurred, you should consult the monitoring officer as soon as possible. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your monitoring officer may advise you that there is no necessity to report it. Nonetheless, the decision as to whether to investigate a breach rests with the Ombudsman. The balance of any doubt should always favour reporting.

To report a breach by you can contact the Ombudsman's office by phone at 0845 6010987, by email to ask@ombudsman-wales.org.uk or via the website at www.ombudsman-wales.org.uk. A special leaflet on making complaints about alleged breaches of the code is available on request or on the website.

In determining whether to investigate a breach the Ombudsman will use a two-stage test. In the first instance, he will aim to establish whether there is evidence that a breach actually took place. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let us know who they are. This latter point is especially important as if the Ombudsman only has one person's word against another's, it's usually not possible for him to make a finding that a breach has occurred, and in the absence of corroboration, he won't usually begin an investigation.

The second test the Ombudsman will apply is whether the breach alleged would be likely to lead to a sanction. The Ombudsman has discretion as to whether to investigate or not. In using his discretion, he will take account of the outcomes of previous cases considered by standards committees across Wales and decide accordingly.

Vexatious complaints

See paragraph 6(1)(d)

You must not make complaints against other members or staff members or people working on behalf of your authority which are not founded in fact and which are motivated by malice or political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is thin or non-existent.

Where details of such complaints are passed to local press and media, this in itself is likely to be a breach of the Code. You must report well-founded alleged breaches to the Ombudsman, not to your local newspaper or radio station. The press will properly cover the business of any hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

Co-operating with investigations

See paragraph 6(2)

When the Ombudsman or your monitoring officer are conducting investigations using their statutory powers, you must co-operate with the investigations. Not to do so is itself a breach of the code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents. The Ombudsman and your monitoring officer will make reasonable allowances for urgent pressures you face and arrangements previously made, e.g. for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out.

Using your position improperly

See Paragraph 7(a)

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.

The authority's resources

See Paragraph 7(b)

You must only use or authorise the use of the resources of the authority in accordance with its requirements.

Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code of Conduct.

If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

Using resources for proper purposes only

See Paragraphs 7(b)(v) and 7(b)(vi)

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your local authority.

You should never use council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct.

Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

Reaching decisions objectively

See paragraph 8

When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and objectively. During the decision-making process you must act fairly and take proper account of the public interest. In advance of meetings members need to be alert to the distinction between predisposition and predetermination. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (predisposition) as long as you keep an open mind are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

Predetermination or bias on the other hand is where a member has clearly decided on a course of action in advance of a meeting and is totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Predetermination could not only invalidate the decision, it would also amount to a breach of the Code.

Considering advice provided to you and giving reasons

See Paragraph 8

You must have regard to advice from your authority's officers, especially the chief executive, chief finance officer or monitoring officer where they give it under their statutory duties. This is a complex area and there are provisions within other legislation which underpin it, but in general, it goes well beyond a requirement to simply consider and reject advice if it's not welcome. The Ombudsman expects members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is very important to record the reasons for not doing so.

It is worth reflecting also that this places a considerable onus on statutory officers to consider their formal advice carefully, and again, where it is likely to be contentious, to keep a record of it. There may be isolated cases where advice is given to a member which when followed, leads to a breach of the Code. In investigating such cases, if the evidence suggests that there has been a breach, the Ombudsman would generally regard the flawed advice as a factor in mitigation, rather than as evidence that no breach occurred.

If you seek advice, or advice is offered to you, for example, on whether or not you should register a personal interest, you should have regard to this advice before you make your mind up. Failure to do so may be a breach of the Code of Conduct.

You must give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

Where members disagree with officer recommendations in making a decision, members will need to take particular care in giving clear reasons for the decision. This applies to decisions to vote against the advice of the three statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.

Expenses

See paragraph 9(a)

You need to follow the law and your authority's requirements in claiming expenses and allowances. If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure supported by receipts where appropriate, so that you can properly evidence your claims.

3. Personal and prejudicial interests

Personal Interests

See paragraph 10

In carrying out your work as a member, you must always consider whether you have a personal interest, and whether the code requires you to disclose it. You have a **personal interest** in any business of your authority, including when making a decision, where it relates to or is likely to affect:

1. your job or business;
2. your employer, or any firm in which you are a partner or paid director;
3. any person who has paid towards the cost of your election or your expenses as a member;
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital which has premises or land in your authority's area;
5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in as described in 4;
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans);
7. any land let by your authority to a firm in which you're a partner, paid director or a body as set out in 4;
8. any body to which you've been elected, appointed or nominated by your authority, or
9. any
 - public authority or body exercising functions of a public nature,
 - company, industrial and provident society, charity or body directed to charitable purposes,
 - body whose main role is influencing public opinion or policy,
 - trade union or professional association or private club, society or association operating in your authority's area

in which you have membership or are in a position of general control or management. In considering this, regard should be given as to whether a reasonable member of the public would believe that your objectivity on the matter would be affected. It is always safer to declare an interest, however, if in doubt consult your Monitoring Officer.

If a member of the public could reasonably conclude that you are more influenced by issues in your ward or electoral division than by the interests of the authority as a whole e.g. if the authority needs to make a provision but you don't think it should be in your ward, then you would have a personal interest.

If a decision might be seen as affecting your well being or financial position or the well being or financial position of any person who lives with you or with whom you have a close personal association to a greater extent than other people in your ward or, for members of authorities which do not have wards (e.g. national parks) your authority's area, you also have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company but also issues about the location of developments, where it might make a big difference to where you or your family or close associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

When papers are for information only and not discussed, it is not necessary to declare an interest. However if a paper intended for information only is discussed any interest must be declared.

What is "a body exercising functions of a public nature"?

The phrase "a body exercising functions of a public nature" has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function?
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer 'yes' to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition: health bodies, council-owned companies exercising public functions and school governing bodies. If you need further information or specific advice on this matter, please contact your monitoring officer.

What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being.

A personal interest can affect you, your family or close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, a personal interest would need to be declared in both situations.

Who is a member of your family or close associate?

A member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate, someone with whom you have been in dispute or someone whom you know through general social contacts.

In small communities members will often have close associations with many individuals. If you are in doubt as to whether this constitutes whether this constitutes a ‘personal interest’ you should take the advice of the monitoring office and, if necessary, seek a dispensation.

What if I belong to an authority without wards?

If you are a member of an authority that does not have wards, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you, your family, or people with whom you have a close association, more than it would affect other people in your authority’s area.

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or ought to be aware of the existence of the personal interest.

Clearly you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

If you declare a personal interest you can remain in the meeting, speak and vote on the matter, unless your personal interest is also a **prejudicial interest**.

What constitutes a prejudicial interest is outlined in a following section.

Disclosing personal interests

See paragraph 11

At meetings, you must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to you except in limited circumstances. Even if your interest is on the register of interests, you must declare it orally in the meetings where matters relating to that interest are discussed.

If you're making representations in writing (including emails, faxes etc.) to another member or an officer, you must include details of any personal interests you have.

Similarly, if you're speaking with an officer or member in person, by phone or video conference you should tell them about any personal interest you have before making representations. You are obliged to confirm your interest by e-mail or in writing to the officer concerned and to the monitoring officer your interest within 14 days. The Ombudsman would generally expect officers to make a record of any conversation in which a member has declared an interest and attach it to the appropriate file.

If you're making a decision as part of an executive or board, you must make sure that the written record of that decision (e.g. minutes of a cabinet meeting) includes details of your interest.

If you have disclosed an interest at a meeting which has not previously been recorded, you must give it in writing to your authority in line with the arrangements set out by your monitoring officer. Normally, this will mean immediately after the meeting concerned or as soon as possible thereafter. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you have agreed with your monitoring officer that the information about your personal interest is sensitive information then you should disclose the existence of a personal interest, and confirm that the monitoring officer has agreed that the information about it is sensitive. More information about this is included in the separate section below.

Prejudicial Interests

See paragraph 12

What is a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if either of the following conditions apply:

- the matter does not fall within one of the exempt categories of business, or
- the matter relates to a licensing or regulatory matter

and a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

Exempt categories of business

Paragraph 12(2) of the Code of Conduct states that a member will not have a prejudicial interest in any business that relates to:

- another relevant authority of which you are also a member;
- another public organisation or a body exercising functions of a public nature in which you hold a position of general control or management;
- a body to which you've been elected or appointed to by your authority (for example, if appointed a trustee by your community council to a board of a community hall);
- your role as school governor unless the business specifically relates to your school

In the same way, you won't have a prejudicial interest if the matter relates to any of the following functions of your authority:

- **Housing:** if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you don't have arrears of rent of more than 2 months.
- **School meals or school transport and travelling expenses:** if you are a parent or guardian of a child in full-time education or you are a parent governor, unless it relates particularly to the school your child attends.
- **An allowance, payment or indemnity for members.**

Community Councillors don't have a prejudicial interest in decisions made by their councils in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value doesn't exceed £500 in any one financial year. Community councillors who have been appointed to the community group or voluntary organisation concerned by their community council will not have a prejudicial interest in decisions made by their council in respect of any grants, loans or other financial assistance.

What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of family or close associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.


Example: you would have a prejudicial interest in a planning application proposal if a member of your family lives next to the proposed site. This is because your family member would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The existence of the close family tie means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. It does not matter whether it actually would or not.

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, a reasonable member of the public might conclude that you would be inclined to vote accordingly, whether this is the case or not.


Our ref: PT/SMH

Ask for: Susan Hudson

Your ref:

 01656 641153

Date: 30 November 2009

 consultation@ombudsman-wales.org.uk

(See over for list of consultees)

Dear Colleague

Code of Conduct - Draft Guidance from the Public Services Ombudsman for Wales

I am consulting on the statutory guidance that I intend issuing under Section 68 of the Local Government Act 2000 in respect of the Model Code of Conduct. The draft guidance (enclosed) draws heavily on the guidance issued by Standards for England on the English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. It also seeks to address issues raised in the responses received to my preliminary consultation with monitoring officers earlier this year.

I would be grateful if Chief Executives of County/County Borough Councils and Clerks of Town/Community Councils could share the content of the draft guidance with the members of their authority.

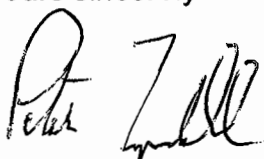
It is intended that the final guidance will be published in March 2010. However, in the interim period, monitoring officers may wish to refer to the draft guidance when advising members on the Code.

Responses to this consultation:

- should be submitted **by Friday, 12 February 2010**
- **preferably** by e-mail: consultation@ombudsman-wales.org.uk,
- but can also be sent to:

Susan Hudson
Policy & Communications Manager
Public Services Ombudsman for Wales
Pencoed
CF35 5LJ

Yours sincerely



Peter Tyndall
Ombudsman

Distribution List for Code of Conduct Guidance Consultation:

Adjudication Panel for Wales

Association of Council Secretaries and Solicitors

County & County Borough Councils':

- Chief Executives
- Monitoring Officers
- Standards Committee Chairs

Fire Authorities':

- Chief Executives
- Monitoring Officers
- Standards Committee Chairs

Minister for Social Justice and Local Government, Welsh Assembly Government

National Park Authorities':

- Chief Executives
- Monitoring Officers
- Standards Committee Chairs

One Voice Wales

Police Authorities - Monitoring Officers (for information)

Town/Community Councils - Clerks

Welsh Local Government Association



The Code of Conduct

DRAFT

**Guidance from the
Public Services Ombudsman for Wales**

Preface



This guide from the Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct introduced in 2008. The Code of Conduct applies to all members and co-opted members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. All members are required to sign up to it as part of their declarations of acceptance of office. The Code of Conduct does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate code of conduct applying to officers of local authorities in Wales.

The following pages aim to provide you with a general understanding of the Code of Conduct and its requirements. Section 1 provides an introduction, while Section 2 outlines your obligations under the Code of Conduct, referencing specific paragraphs of the Code of Conduct for further information. Sections 3 and 4 deal with general issues surrounding interests, and aim to clarify a number of provisions which you will find in Part 3 & 4 of the Code of Conduct. You can obtain a copy of the Code of Conduct by downloading it from your authority's website or contacting the monitoring officer.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your monitoring officer where appropriate and to make a decision as to the most suitable course of action.

You will as a member be offered training on the Code whether by a monitoring officer or from a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and its interpretation.

In issuing this advice I am very conscious of the importance of standards in ensuring the future health and effectiveness of our democratic institutions. It is important that we should all work collaboratively to drive up standards and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so we can build public confidence in our democratic institutions and promote good governance for the benefit of the people of all of our communities.

Peter Tyndall
Public Services Ombudsman for Wales
November 2009

This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 the Local Government Act 2000 for elected, co-opted and appointed members of:

- county and county borough councils;
- community councils;
- fire and rescue authorities, and
- national park authorities

in Wales.

NB Members of police authorities in Wales must comply with the English Code of Conduct and should have regard to the Guidance issued by Standards for England which is available from its website: <http://www.standardsforengland.gov.uk> or by contacting the organisation via one of the following methods:

Telephone: 0161 817 5300

Fax: 0161 817 5499

Minicom: 0161 817 5449

Email: enquiries@standardsforengland.gov.uk

Writing to: Standards for England
Fourth Floor
Griffin House
40 Lever Street
Manchester
M1 1BB
United Kingdom

Acknowledgement

This guidance draws heavily on the guidance prepared and issued by Standards England on the English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. It also reflects responses to the consultation undertaken by the Ombudsman. I am grateful to Standards for England for their agreement to the use of their work.

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1. Introduction

The Local Government Act (2000) created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

Authorities were expected to adopt the Code of Conduct in its model form, without amendment. This was intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public. It also minimises the legal risk which might have arisen if your authority had adopted additional provisions which were unenforceable.

The Principles

The Local Government Act empowered the National Assembly to issue principles to which members must have regard in undertaking their roles. The current principles were set out in a statutory instrument¹ and are detailed below.

1. Selflessness

Members must act solely in the public interest. They must never use their position as members to improperly confer advantage on themselves or to improperly confer advantage or disadvantage on others.

2. Honesty

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

3. Integrity and Propriety

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

4. Duty to Uphold the Law

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

5. Stewardship

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

¹ The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

6. Objectivity in Decision-making

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

7. Equality and Respect

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

8. Openness

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

9. Accountability

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

10. Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Code of Conduct, and failure to comply with the Principles is not of itself, therefore, evidence of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements at paragraphs 4 (a) and (b) in the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and the Ombudsman encourages members to have regard to them at all times.

Deciding when the Code of Conduct applies to you

The Code of Conduct applies to you:

1. Whenever you act in your official capacity, including whenever you conduct the business of your authority or act, claim to act, or give the impression you are acting, in your official capacity or as a representative of your authority.
2. At any time, should you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute or if you use your position to gain an advantage or avoid a disadvantage for yourself or any other person or if you misuse your authority's resources.

Where you act as a representative of your authority on another relevant authority, or any other body including a Police Authority, you must, when acting for that other authority, comply with their Code of Conduct. When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Committee (see its website: www.charity-commission.gov.uk).

If you are acting as a representative of your authority on another body, for example as a school governor, which doesn't have a code of conduct relating to its members, you must comply with your authority's own code unless it conflicts with any legal requirements that the other body has to comply with.

2. General obligations under the Code of Conduct

Equality

See Paragraph 4(a)

You must carry out your duties in a way which promotes equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age, and religion or belief.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age, and religion or belief.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age, and religion or belief, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age, and religion or belief, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Equality laws also impose positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct

Treating others with respect

See Paragraph 4(b)

You must treat others with respect.

Political groupings are common in authorities, and may draw their members either from formal political parties or, as is often the case in Wales, from groups of independent members. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect. It is essential that members avoid having debates which go beyond robust. Elected members should ensure that political points are made in ways which, while they may be forceful, are nonetheless respectful of their opponents. There is a clear distinction between robustly engaging in debate about policies or programmes, and engaging in personal attacks on individuals.

However, the dividing line is inevitably blurred by debate about the qualities of office holders, and whether they can offer the leadership or stewardship demanded by their roles. Ultimately, there must be a measure of reasonableness in critique, and it should be confined to material issues, and avoid personal attacks and offensive behaviour.

The chairs of meetings have an important role to play in managing debate within reasonable parameters, and those charged with chairing meetings should take advantage of any support and training available to enhance their skills and expertise. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

Bullying and intimidation

See Paragraph 4(c)

You must not bully any person including other councillors, council officers or members of the public.

Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

Members need to ensure that their behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances but there is no question that the relative seniority of the officer will be a factor in many cases. Very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this.

It's also evident that there are appropriate channels for expressing concern about the performance of an officer, and doing so in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. It is important that you raise issues about poor performance in the correct way and proper forum. However, if your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code of Conduct.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

Compromising the impartiality of officers of the authority

See Paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority.

You should not approach or pressure anyone who works for, or on behalf of, the authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Disclosing confidential information

See Paragraph 5(a)

You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:

- You have the consent of the person authorised to give it.
- You are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.

- The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
 1. the disclosure must be reasonable
 2. the disclosure must be in the public interest
 3. the disclosure must be made in good faith
 4. the disclosure must be made in compliance with any reasonable requirements of your authority.

In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:
 - Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
 - Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
 - The identity of the person or body to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
 - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
 - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
 - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
 - Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, which has either happened in the past, is currently happening, or is likely to happen in the future:
 - (a) A criminal offence is committed.
 - (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
 - (c) A miscarriage of justice occurs.
 - (d) The health or safety of any individual is in danger.
 - (e) The environment is likely to be damaged.
 - (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.
3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.
4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Preventing access to information

See Paragraph 5(b)

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 0845 630 6060.

Any information that you produce in your official capacity is likely to be subject to the disclosure requirements of the Freedom of Information Act, and you may be required to release it in response to a request. Failure to comply with a legitimate request will be a breach of the code.

Disrepute

See Paragraph 6.1(a)

You must not behave in a way which would bring your office or authority into disrepute at any time.

As a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your office or your authority. Dishonest and deceitful behaviour may bring your authority into disrepute, as may conduct which results in a criminal conviction, such as dishonest, threatening or violent behaviour.

In addition to paragraph 6(1)(a), paragraph 12 is also relevant to the proper use of your position. Paragraph 12 supports your role as a community advocate, representing and speaking for the concerns of your community, even where you have a prejudicial interest. This right applies to you at meetings where you have a statutory right to speak or you are provided with the same opportunity to speak as ordinary members of the public would be allowed. If your authority does not allow members of the public to attend the relevant meeting for the purpose of speaking to it, paragraph 12 will not apply to you unless you have a statutory right to speak on the matter.

You must leave the room or chamber immediately after you have made the representations, given your evidence, or answered questions, and make no further attempt to influence the decision. If the meeting decides that you must stop speaking to the meeting, even if you have more to say, you must stop and leave the room. If you fail to comply with the meeting's direction or paragraph 12 of the Code of Conduct, you may be found to have improperly influenced the decision.

Reporting breaches of the Code

See paragraph 6(1)(c)

You must report breaches of the Code to the Ombudsman and to your monitoring officer. If you are in doubt as to whether a breach has occurred, you should consult the monitoring officer as soon as possible. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your monitoring officer may advise you that there is no necessity to report it. Nonetheless, the decision as to whether to investigate a breach rests with the Ombudsman. The balance of any doubt should always favour reporting.

To report a breach by you can contact the Ombudsman's office by phone at 0845 6010987, by email to ask@ombudsman-wales.org.uk or via the website at www.ombudsman-wales.org.uk. A special leaflet on making complaints about alleged breaches of the code is available on request or on the website.

In determining whether to investigate a breach the Ombudsman will use a two-stage test. In the first instance, he will aim to establish whether there is evidence that a breach actually took place. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let us know who they are. This latter point is especially important as if the Ombudsman only has one person's word against another's, it's usually not possible for him to make a finding that a breach has occurred, and in the absence of corroboration, he won't usually begin an investigation.

The second test the Ombudsman will apply is whether the breach alleged would be likely to lead to a sanction. The Ombudsman has discretion as to whether to investigate or not. In using his discretion, he will take account of the outcomes of previous cases considered by standards committees across Wales and decide accordingly.

Vexatious complaints

See paragraph 6(1)(d)

You must not make complaints against other members or staff members or people working on behalf of your authority which are not founded in fact and which are motivated by malice or political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is thin or non-existent.

Where details of such complaints are passed to local press and media, this in itself is likely to be a breach of the Code. You must report well-founded alleged breaches to the Ombudsman, not to your local newspaper or radio station. The press will properly cover the business of any hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

Co-operating with investigations

See paragraph 6(2)

When the Ombudsman or your monitoring officer are conducting investigations using their statutory powers, you must co-operate with the investigations. Not to do so is itself a breach of the code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents. The Ombudsman and your monitoring officer will make reasonable allowances for urgent pressures you face and arrangements previously made, e.g. for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out.

Using your position improperly

See Paragraph 7(a)

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.

The authority's resources

See Paragraph 7(b)

You must only use or authorise the use of the resources of the authority in accordance with its requirements.

Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code of Conduct.

If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

Using resources for proper purposes only

See Paragraphs 7(b)(v) and 7(b)(vi)

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your local authority.

You should never use council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct.

Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

Reaching decisions objectively

See paragraph 8

When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and objectively. During the decision-making process you must act fairly and take proper account of the public interest. In advance of meetings members need to be alert to the distinction between predisposition and predetermination. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (predisposition) as long as you keep an open mind are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

Predetermination or bias on the other hand is where a member has clearly decided on a course of action in advance of a meeting and it totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Predetermination could not only invalidate the decision, it would also amount to a breach of the Code.

Considering advice provided to you and giving reasons

See Paragraph 8

You must have regard to advice from your authority's officers, especially the chief executive, chief finance officer or monitoring officer where they give it under their statutory duties. This is a complex area and there are provisions within other legislation which underpin it, but in general, it goes well beyond a requirement to simply consider and reject advice if it's not welcome. The Ombudsman expects members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is very important to record the reasons for not doing so.

It is worth reflecting also that this places a considerable onus on statutory officers to consider their formal advice carefully, and again, where it is likely to be contentious, to keep a record of it. There may be isolated cases where advice is given to a member which when followed, leads to a breach of the Code. In investigating such cases, if the evidence suggests that there has been a breach, the Ombudsman would generally regard the flawed advice as a factor in mitigation, rather than as evidence that no breach occurred.

If you seek advice, or advice is offered to you, for example, on whether or not you should register a personal interest, you should have regard to this advice before you make your mind up. Failure to do so may be a breach of the Code of Conduct.

You must give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

Where members disagree with officer recommendations in making a decision, members will need to take particular care in giving clear reasons for the decision. This applies to decisions to vote against the advice of the three statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.

Expenses

See paragraph 9(a)

You need to follow the law and your authority's requirements in claiming expenses and allowances. If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure supported by receipts where appropriate, so that you can properly evidence your claims.

3. Personal and prejudicial interests

Personal Interests

See paragraph 10

In carrying out your work as a member, you must always consider whether you have a personal interest, and whether the code requires you to disclose it. You have a **personal interest** in any business of your authority, including when making a decision, where it relates to or is likely to affect:

1. your job or business;
2. your employer, or any firm in which you are a partner or paid director;
3. any person who has paid towards the cost of your election or your expenses as a member;
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital which has premises or land in your authority's area;
5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in as described in 4;
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans);
7. any land let by your authority to a firm in which you're a partner, paid director or a body as set out in 4;
8. any body to which you've been elected, appointed or nominated by your authority, or
9. any
 - public authority or body exercising functions of a public nature,
 - company, industrial and provident society, charity or body directed to charitable purposes,
 - body whose main role is influencing public opinion or policy,
 - trade union or professional association or private club, society or association operating in your authority's area

in which you have membership or are in a position of general control or management. In considering this, regard should be given as to whether a reasonable member of the public would believe that your objectivity on the matter would be affected. It is always safer to declare an interest, however, if in doubt consult your Monitoring Officer.

If a member of the public could reasonably conclude that you are more influenced by issues in your ward or electoral division than by the interests of the authority as a whole e.g. if the authority needs to make a provision but you don't think it should be in your ward, then you would have a personal interest.

If a decision might be seen as affecting your well being or financial position or the well being or financial position of any person who lives with you or with whom you have a close personal association to a greater extent than other people in your ward or, for members of authorities which do not have wards (e.g. national parks) your authority's area, you also have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company but also issues about the location of developments, where it might make a big difference to where you or your family or close associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

When papers are for information only and not discussed, it is not necessary to declare an interest. However if a paper intended for information only is discussed any interest must be declared.

What is "a body exercising functions of a public nature"?

The phrase "a body exercising functions of a public nature" has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function?
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer 'yes' to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition: health bodies, council-owned companies exercising public functions and school governing bodies. If you need further information or specific advice on this matter, please contact your monitoring officer.

What does "affecting well-being or financial position" mean?

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being.

A personal interest can affect you, your family or close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, a personal interest would need to be declared in both situations.

Who is a member of your family or close associate?

A member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate, someone with whom you have been in dispute or someone whom you know through general social contacts.

In small communities members will often have close associations with many individuals. If you are in doubt as to whether this constitutes whether this constitutes a 'personal interest' you should take the advice of the monitoring office and, if necessary, seek a dispensation.

What if I belong to an authority without wards?

If you are a member of an authority that does not have wards, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you, your family, or people with whom you have a close association, more than it would affect other people in your authority's area.

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or ought to be aware of the existence of the personal interest.

Clearly you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

If you declare a personal interest you can remain in the meeting, speak and vote on the matter, unless your personal interest is also a **prejudicial interest**.

What constitutes a prejudicial interest is outlined in a following section.

Disclosing personal interests

See paragraph 11

At meetings, you must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to you except in limited circumstances. Even if your interest is on the register of interests, you must declare it orally in the meetings where matters relating to that interest are discussed.

If you're making representations in writing (including emails, faxes etc.) to another member or an officer, you must include details of any personal interests you have.

Similarly, if you're speaking with an officer or member in person, by phone or video conference you should tell them about any personal interest you have before making representations. You are obliged to confirm your interest by e-mail or in writing to the officer concerned and to the monitoring officer your interest within 14 days. The Ombudsman would generally expect officers to make a record of any conversation in which a member has declared an interest and attach it to the appropriate file.

If you're making a decision as part of an executive or board, you must make sure that the written record of that decision (e.g. minutes of a cabinet meeting) includes details of your interest.

If you have disclosed an interest at a meeting which has not previously been recorded, you must give it in writing to your authority in line with the arrangements set out by your monitoring officer. Normally, this will mean immediately after the meeting concerned or as soon as possible thereafter. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you have agreed with your monitoring officer that the information about your personal interest is sensitive information then you should disclose the existence of a personal interest, and confirm that the monitoring officer has agreed that the information about it is sensitive. More information about this is included in the separate section below.

Prejudicial Interests

See paragraph 12

What is a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if either of the following conditions apply:

- the matter does not fall within one of the exempt categories of business, or
- the matter relates to a licensing or regulatory matter

and a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

Exempt categories of business

Paragraph 12(2) of the Code of Conduct states that a member will not have a prejudicial interest in any business that relates to:

- another relevant authority of which you are also a member;
- another public organisation or a body exercising functions of a public nature in which you hold a position of general control or management;
- a body to which you've been elected or appointed to by your authority (for example, if appointed a trustee by your community council to a board of a community hall);
- your role as school governor unless the business specifically relates to your school

In the same way, you won't have a prejudicial interest if the matter relates to any of the following functions of your authority:

- **Housing:** if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you don't have arrears of rent of more than 2 months.
- **School meals or school transport and travelling expenses:** if you are a parent or guardian of a child in full-time education or you are a parent governor, unless it relates particularly to the school your child attends.
- An allowance, payment or indemnity for members.

Community Councillors don't have a prejudicial interest in decisions made by their councils in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value doesn't exceed £500 in any one financial year. Community councillors who have been appointed to the community group or voluntary organisation concerned by their community council will not have a prejudicial interest in decisions made by their council in respect of any grants, loans or other financial assistance.

What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of family or close associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

Example: you would have a prejudicial interest in a planning application proposal if a member of your family lives next to the proposed site. This is because your family member would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The existence of the close family tie means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. It does not matter whether it actually would or not.

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, a reasonable member of the public might conclude that you would be inclined to vote accordingly, whether this is the case or not.

N.B. The Ombudsman does not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as he believes them to be covered by the general dispensation.

Overview and Scrutiny Committees

See paragraph 13

Please note: this section does not apply to community councils, fire and rescue authorities, and national park authorities.

You have a prejudicial interest in any business before an overview and scrutiny committee or sub-committee meeting where both of the following requirements are met:

- That business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees.
- You were a member of that decision-making body at that time and you were present at the time the decision was made or action taken.

If the overview and scrutiny committee is checking a decision which you were involved in making you may be called to attend the meeting to give evidence or answer questions on the matter, and you may do so providing it is acting under its statutory powers.

What to do when you have a prejudicial interest

See paragraph 14

Even where you have a prejudicial interest, the Code of Conduct supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

Key points:

If you have a **prejudicial interest** in a matter being discussed at a meeting, you must declare that you have a prejudicial interest and the nature of that interest as soon as that interest becomes apparent to you.

You should then leave the room, **unless members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose.

However, you must immediately leave the room or chamber once you have finished your contribution or when the meeting decides that you have finished (if that is earlier). You cannot remain in the public gallery to observe the vote on the matter.

In addition, you must not seek to **improperly influence** a decision in which you have a prejudicial interest. This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage.

Do I have a statutory right to speak to the meeting?

The Code of Conduct does not provide you with a general right to speak to a meeting where you have a prejudicial interest. However, in limited circumstances, legislation may provide you with a right to speak (for example, licensing hearings and standards hearings) which the Code of Conduct recognises. If so, you will be allowed to exercise that right to speak. Your monitoring officer should be able to confirm whether this is relevant to your case.

If I don't have a statutory right, will I be allowed to speak to the meeting?

The Code of Conduct aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. You may not take part in the discussion or observe the vote.

When must I leave the room where the meeting is held?

You must leave immediately after you have made your representations, given evidence or answered questions, and before any debate starts.

If the meeting decides that you should finish speaking, despite your intention to say more, you must comply with the meeting's decision. Although members of the public may be allowed to observe the discussion and vote on the matter, you are not allowed to do so and must leave the room immediately. Failure to do so may be viewed as an attempt to improperly influence the meeting. In this context, the room is taken to include the public gallery.

What does improperly influencing a decision mean?

You must not use your position or attempt to use your position improperly to further your own interests or those with whom you have a close personal association in a way that is not open to ordinary members of the public. Clear examples of improper influence would be using coercion, harassment, inducement or pressure to influence a matter.

It may also be improper (and a breach of the Code) if you refuse to leave the meeting, or continue to speak to a meeting, on a matter in which you have a prejudicial interest, after the meeting has decided that you must stop speaking and leave.

What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so if you have a prejudicial interest. You must leave the room where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, where the public may be allowed to sit in the public gallery to observe the meeting, you will be required to leave the room during the debate and vote.

If I have a prejudicial interest, how else can I influence the decision?

You can still present your views to the meeting through other means and influence the decision in a way that is not improper. For example, you can:

- Make written representations in your private capacity. It is recommended that the existence and nature of the interest should be disclosed in such representations. You should not seek preferential consideration for your representations. Such written representations should be addressed to officers rather than other members of the authority.

- Use a professional representative to act on your behalf, e.g. a planning consultant or architect to make a planning application.
- Arrange for another member of your authority to represent the views of your constituents on matters in which you have a prejudicial interest.

What if I am summoned to attend a scrutiny committee to discuss business in which I have a prejudicial interest?

If you're asked to attend by the Committee exercising its statutory powers, then you may attend and participate in the meeting.

Executive or cabinet roles

Please note: this section will not apply to community councils, fire and rescue authorities or national park authorities.

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests.

If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority may make other arrangements as set out in sections 14-16 of the Local Government Act 2000. This means that the decision can be taken by an officer, another cabinet member, the full executive, or a committee of the executive.

Although you have a prejudicial interest in a matter, you may be able to make representations, answer questions and give evidence as long as a member of the public would have the same rights, but you are barred from decision-making about that matter individually or in cabinet. You also should not participate in any early consideration of it, or exercise any delegated powers in relation to it. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence.

Dispensations

If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

You can apply in writing to your authority's standards committee for a dispensation on one or more of the following grounds:

- more than 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests;
- more than half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion);
- the political balance at the meeting would be upset;
- the nature of your interest is such that your participation wouldn't harm public confidence;
- your interest is common to a significant proportion of the general public;
- you have a particular role or expertise which would justify your participation;
- the business is being considered by an overview or scrutiny committee and you don't have a pecuniary interest;
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you don't have any other interest, although in this instance, any dispensation won't let you vote on the matter, or
- the Committee believes that your participation would be in the interests of the people in your authority's area and that the Committee notifies Welsh Ministers within seven days.

You must apply for a dispensation individually and not as a group or authority. If the standards committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the standards committee can grant the dispensation and will do so at its discretion. The standards committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority. If failure to grant a dispensation will result in an authority or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

4. Registration of Interests



Key points:

All members of principal authorities have to provide a record of their interests in a public register of interests. It is good practice for members of community councils also to do so.

You must tell your monitoring officer in writing (in the case of a community councillor, perhaps through your clerk) within 28 days of taking office, or within 28 days of any change to your register of interests, of any interests which fall within the categories set out in the Code of Conduct, outlined below.

You need to register your interests so that the public, authority staff and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

As previously mentioned, you must tell your monitoring officer in writing within 28 days of taking office, or within 28 days of any change to your register of interests, of any interests which fall within the categories set out in the Code of Conduct. These categories include:

- Your membership or position of control or management in:
 - any other bodies to which you were appointed or nominated by the authority
 - any bodies **exercising functions of a public nature** (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union.
- Your job(s) or business(es).
- The name of your employer or people who have appointed you to work for them.

- The name of any person who has made a payment to you in respect of your election, or expenses you have incurred in carrying out your duties.
- The name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company.
- Any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register.
- Any gift or hospitality over the value specified by your authority that you receive as a member and the person you believe to be the source of the gift or hospitality.
- Any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use.

Sensitive information

Key points:

You may be exempt from having to include sensitive information on your register of interests. If your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest but you will not have to give any details about the nature of that interest.

Sensitive information may include your sensitive employment (such as certain scientific research or the Special Forces) or other interests that are likely to create a serious risk of violence or intimidation against you or someone who lives with you.

You should provide this information to your monitoring officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. You do not need to include this information in your register of interests, if your monitoring officer agrees. Ultimately, you must decide what information to include on your publicly available register of interests. If information on your register ceases to be sensitive, you must notify your monitoring officer within 28 days asking them to amend the information accordingly.

Gifts and hospitality

Key points:

You must register any gifts or hospitality worth more than the amount specified by your authority that you receive in connection with your official duties as a member, and the source of the gift or hospitality.

You must register the gift or hospitality and its source within 28 days of receiving it.

Like other interests in your register of interests, you automatically have a **personal interest** in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person and then decide whether that interest is also a **prejudicial interest**.

Once three years have passed since you registered the gift or hospitality in your register of interests, your obligation to disclose that interest to any relevant meeting ceases.

Is the gift or hospitality connected to my official duties as a member?

You should ask yourself, would I have been given this if I was not on the council? If you are in doubt as to the motive behind a gift or hospitality, we recommend that you register it or speak to your monitoring officer or your town/community clerk where appropriate.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position or if your authority requires you to.

What if I do not know the value of a gift or hospitality?

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.



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