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**REPORT OF THE MONITORING OFFICER**

**AGENDA ITEM: 5**

**DRAFT CODE OF GUIDANCE – REPORT ON CONSULTATION  
PROCESS**

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**Purpose of the Report**

1. To provide members of the Committee with updated information on the Draft Guidance from the Public Service Ombudsman for Wales, and to consider future implementation.

**Background**

2. Members received a report on the draft guidance at their last meeting on the 26<sup>th</sup> January 2010 and resolved to send in formal response on behalf of the Standards & Ethics Committee. A copy of this response is attached at Appendix 1.
3. Members will also recall that the Wales Branch of the Association of County Solicitors (of which the Monitoring Officer is Chair) also sent in a formal response which was made available to Members.
4. The Ombudsman had made it very clear that he was most anxious to produce a final document that was both useful and informative for Members and properly reflected the various consultation comments that he had received.

**Results of the Consultation Process**

5. As a direct result of the consultation process and the responses received from a wide variety of Standards & Ethics Committees across Wales together with other interested parties and Monitoring Officers, the Ombudsman has produced a fresh Draft Guidance which is attached at Appendix 2. The Monitoring Officer is very pleased to report that the Ombudsman has taken on board a substantial number of the points raised and considers that the new draft is now a much more robust and useful document. The draft is available at this stage simply for technical errors to be corrected and the formal consultation process has now ceased.

## **Timetable for Implementation**

6. It is understood that the guidance is likely to be issued imminently i.e. within the next few weeks, and all Public Authorities affected by it must give some consideration to how it is communicated to Elected Members and other interested parties.

All Members of the Authority received comprehensive training on the Code shortly after the Council Elections in 2008. Members' attention is drawn to the comments of the Ombudsman in the third paragraph of the introduction at page 1:-

"I strongly recommend that all Members should attend training and take advice where it is offered".

The Monitoring Officer intends to offer further workshops to all Elected Members during June and July to refresh their knowledge of the Code and also to introduce the guidance and some of the recent decided decisions made by the Adjudication Panel which may have implications for Members.

## **Legal Implications**

7. There are none arising out of this report.

## **Financial Implications**

8. There are none arising out of this report.

## **Recommendations**

9. Members of the Committee are recommended to:-
10. (i) note the improved Draft Guidance at Appendix 2;  
(ii) agree that further Training Workshops should be offered to all Members on the Code of Conduct and the Guidance;  
(iii) I strongly recommend that all Members should attend these Workshops.

**Kate Berry**

City and County Solicitor & Monitoring Officer

Dated: 15<sup>th</sup> March 2010



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11<sup>th</sup> February 2010

Dear Mr Tyndall

### **Code of Conduct – Draft Guidance from the Public Services Ombudsman for Wales**

I am writing on behalf of Cardiff's Standards & Ethics Committee in response to your consultation on the above. Our Committee is fortunate to have had some opportunity to discuss the draft Guidance and has authorised me to respond to you with the following comments.

Our Committee welcomes the Guidance in principle; indeed it has been long-awaited. In recognition of its importance, however, we are concerned that we have not had sufficient time to properly consider and respond to this, particularly in view of the intervening Christmas holiday period. We would respectfully urge you to extend the consultation deadline so that all concerned have an adequate opportunity to fully explore and articulate concerns and queries raised by this Guidance.

We have had the advantage of having sight of the detailed consultation response prepared by the Association of Council Secretaries and Solicitors (ACSeS); and would confirm that our Committee is broadly in agreement with the points made therein.

We are particularly disappointed to note the various inaccuracies contained in the Guidance, for example the references to 'family', which term is used in the English Code but *not* the Welsh Code. Also, various instances where the wording of the Guidance does not correctly follow the wording used in the Code itself. We are concerned that in its present form, the Guidance is more likely to cause confusion than aid understanding. In our view, the Guidance needs more examples to illustrate how the obligations under the Code are to be interpreted, based on the Ombudsman's case notes, experience and understanding. Without such examples, we do not believe the Guidance will advance understanding of the Code in any meaningful way.

Finally, we very much hope that the finalised Guidance will be complemented by other measures focussed on raising awareness and understanding of the Code. We note that Standards for England publishes a range of useful information and guidance



on conduct issues on its website, including a pocket guide on the Code, and FAQ's. We would very much like to see similar measures adopted by your office for Wales.

We are grateful for this opportunity to comment on the draft Guidance and hope our comments are useful. We look forward to your response.

Yours sincerely,

AKMAL HANUK  
Chair  
Standards & Ethics Committee



# The Code of Conduct

For members of local authorities in Wales

## DRAFT

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



# Preface



This guide from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (the Code) introduced in 2008. It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. As a member, you are required to sign up to it as part of your declaration of acceptance of office. The Code 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 and its requirements. Section 1 provides an introduction, while Section 2 outlines your obligations under the Code, referencing specific paragraphs 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. You can obtain a copy of the Code by downloading it from your authority's website or contacting your Monitoring Officer or Clerk (in the case of town and community councils which are referred to as community councils in the guide).

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 or clerk 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**  
**March 2010**

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](mailto: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 on the guidance prepared and 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 reflects responses to the consultation I have undertaken. I am grateful to Standards for England for their agreement to the use of their work in the preparation of this guidance but the responsibility for any error or inaccuracy rests with me as Public Services Ombudsman for Wales.



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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. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

Authorities were required to adopt the Code of Conduct in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. 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.

Standards Committees of principal councils are required to assist members and co-opted members of their authorities together with members of town and community councils in their area to observe the Code and to arrange for advice and training to be provided. I strongly recommend that all members should attend training and take advice where it is offered. I support individual authorities who require members to attend training on the Code before they can join certain decision-making bodies such as Planning Committees.

Ultimately, as a member, you are responsible for the decisions you take and can be held to account for them. However, this doesn't imply that you can take decisions which breach the Code or contrary to advice simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

It is my role as Public Services Ombudsman to investigate complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint of a breach of the code I will use a two-stage test. In the first instance, I will aim to establish whether there is evidence that a breach actually took place.

The second test I will apply is whether the breach alleged would be likely to lead to a sanction. I have discretion as to whether to investigate or not. I have adopted this test in order to explain how I will usually exercise my discretion and to secure a degree of consistency. In using my discretion, I will take account of the outcomes of previous cases considered by standards committees across Wales and decide accordingly.

However, if I am aware of previous complaints about the same member and believe these may be indicative of a pattern of breaches, I will then often choose to investigate. Where there is prima facie evidence of a breach of the Code, and I do not decide to investigate, I will almost always write to the Member concerned making it clear that my decision should not in any way be regarded as approval for any breach of the Code and making clear that I will take it into account if there are further reported breaches.

It is helpful if you specify which aspect of the Code you believe has been breached, but this is not essential.

The process I use for investigating complaints is on my website at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk). If I find that a complaint is justified, I may refer it either to your standards committee or to a tribunal convened by the Adjudication Panel for Wales. If they then find the complaint proven, they can impose a range of sanctions.

### **Standards Committee**

Where a standards committee determines that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

1. no action needs to be taken in respect of that failure;
2. the member or co-opted member should be censured; or
3. the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months.

A member may appeal against the determination of a Standards Committee to the Adjudication Panel for Wales.

### **Adjudication Panel for Wales**

The powers available to the case tribunal when it determines that a member or co-opted member has failed to comply with the code of conduct are:

1. to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of five years;
2. to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or to take no action in respect of the breach.

Where either a standards committee or a case tribunal suspends or partly suspends a member or co-opted member that member or co-opted member is still subject to the code of conduct in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member)

# The Principles

The Local Government Act empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were set out in the Nolan Report "Standards of Conduct in Local Government in England, Scotland and Wales". Three more were added to these; a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others.

Members elected to local authorities give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your authority, and which will give your communities confidence in the way that your authority is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the *Selflessness* principle is covered by Section 7 of the Code, Selflessness and Stewardship.

The current principles were set out in a statutory instrument<sup>1</sup> 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.

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

**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.

**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 Model Code, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code, although some councils have included them in their codes. 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 applies to you

### See paragraphs 2 and 3

The Code applies to you:

1. Whenever you act in your official capacity, including whenever you are conducting the business of your authority or acting, claiming to act, or give the impression you are acting, in your official capacity as a member 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 or attempt to 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](http://www.charity-commission.gov.uk)).

If you are acting as a representative of your authority on another body, for example on the board of a housing association, 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.

If you refer to yourself as councillor, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. For example, if you have a blog or use Twitter or another social networking service in your role as Councillor, then the Code will apply to any comments you make there. Even if you do not use your title, if the content is clearly related to your role, the Code will apply.

**Example** If you are nominated by your authority as the director of a company (a stock transfer housing association for example) you are obliged to act in the best interests of the company. If it has a code of conduct for its directors – you must abide by it. If it doesn't, you must comply with your authority's code, except on the rare occasions where it conflicts with any legal obligations the company may have.

If you are suspended from office for any reason, you must still observe the Code insofar as it relates to any of the activities identified in paragraphs 2 and 3 while you are suspended.



## 2. General obligations under the Code of Conduct



### Equality

#### See Paragraph 4(a)

You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age, and religion. Although the Code is not explicit about trans-gender status, I will normally consider it to be included under the gender category, and expect the principle of equal opportunity to be applied.

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.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age, and religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation age, and religion, 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 if 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 and consideration

## See Paragraph 4(b)

You must show respect and consideration for others.

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.

Whilst it is legitimate to scrutinise the qualities of officeholders, and whether they can offer the leadership or stewardship demanded by their roles, such debate 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 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. This is the case in face to face settings such as meetings as well as when communicating by phone, letter or email or other electronic means.

On occasions, in highly charged debates, some members will make remarks which overstep these guidelines, for example, calling another member of the authority a liar. In deciding whether to investigate such an incident, I will take account of the context, and if the member subsequently apologised. However, if the allegation were to be subsequently repeated in writing – for example, in a newspaper column, blog or "tweet", I would be more likely to investigate. I will also look at whether there have been similar incidents in the past.

## **Example**

A member of a Town Council wrote to a Deputy Minister of the Welsh Assembly Government about an employee ("Mr Smith") of Gwynedd Council, which was also copied to the Council. In the letter the member questioned Mr Smith's competence and motivation and he made a number of comments of a disparaging and personal nature about Mr Smith and his associates. He raised the issue of homosexuality and referring to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out". The member was referred to the Adjudication Panel for Wales.

The Panel found that the member had breached paragraph 4(b) in that he had failed to show respect and consideration for others. It also found that by his use of words he had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

The member was disqualified for 12 months from being or becoming a member of a local authority.

## **Bullying and harassment**

### **See Paragraph 4(c)**

You must not use any bullying behaviour or harass any person including other councillors, council officers or members of the public.

Harassment is repeated behaviour which upsets or annoys people. Bullying can 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.

I will always consider allegations of bullying and harassment from the perspective of the alleged victim. The question to be answered is whether the individual was reasonably entitled to believe they were being bullied rather than whether the person accused of bullying thought that he or she was doing so. Bullying is often carried out face to face, but increasingly, it can be carried out in print or using e-media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

You need to ensure that your 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 the relative seniority of the officer will be a factor in some 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. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member the greater the likelihood that the officer will consider behaviour to constitute bullying.

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. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. 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.

### **Example**

An employee of a County Borough Council complained that a lead member of the Council, had "bullied and intimidated" her during a telephone call and during an internal "portfolio meeting", which were weekly meetings which the member convened and were attended by many officers from the relevant department. The officer had not long been in her post and was employed in a "principal" officer position.

During the telephone conversation the member questioned the officer's right to organise training for scrutiny members. The member was angry and shouted at the officer during the call. The officer was visibly upset when the call ended and she felt she had had a "dressing down" from the member.

The following day during the "portfolio meeting" the officer gave a presentation during which the member displayed visible signs of agitation and anger, becoming red in the face, tapping his pen on the table and interrupting the officer's presentation to such an extent that a more senior officer intervened to protect the officer.

The Adjudication Panel found that the member had breached paragraph 4(a) of the 2002 Code of Conduct in that he had failed to show respect and consideration for others. It also considered that in behaving the way he did in the "portfolio" meeting he brought the office of member into disrepute. It confirmed that members are expected to conduct themselves in an appropriate manner within the confines of a council's building, regardless of whether such conduct is within or is likely to become within the public domain. It suspended the member from the Council for a period of 9 months.

Were I to consider a complaint of this nature under the current Code I would take the view that such behaviour would suggest that there had been a breach of paragraph 4(c) of the Code.

## **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, your authority.

You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them 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 or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

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.

If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code. I would encourage you to adhere to any protocol developed by your authority that deals with relationships between members and officers.

## **Example**

The son and daughter-in-law of a member of a County Borough Council were neighbours of a family who were tenants of the Council. Complaints had been made about the family's conduct. The member contacted officers of the Council regarding the family's occupancy of the council property and its impact on his son's family on a number of occasions, sometimes outside office hours. The calls were made in his role as elected member and he had direct access to officials because he was a member. He received a warning from the Deputy Monitoring Officer as to his conduct, which emphasised the powerful position elected members occupy when dealing with members of staff.

Despite this he continued to contact officers about the matter including requesting an officer to visit his family "there and then" and accusing an officer of "tipping off" the family being complained about that noise monitoring equipment was being installed.

The Adjudication Panel found that the conduct of the member was a persistent course of conduct over a period of 6 months intended to bring undue pressure upon Council officials. It found that by his actions he had sought to compromise the impartiality of officers of the Council. It also found that the member had failed to show respect and consideration for others and that his actions amounted to harassment and he had used his position improperly to promote the interests of his own family. Given the accumulative nature of his dealing with officers and his making a false allegation that an officer had "tipped off" the family he had also brought the office of member into disrepute.

The member was suspended from office for 12 months.

## **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 Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on his website at [www.ico.gov.uk](http://www.ico.gov.uk) or by calling 0845 630 6060.

As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked confidential. On other occasions, this will not be the case, but you must not disclose them even if they are not marked. If you are in any doubt, always ask your monitoring officer or clerk.

As a general rule, you should treat items discussed in the confidential sections of meetings (exempt items) as confidential. These reports have usually been assessed by the author as containing sensitive information, following expert legal advice. The sensitivity of the information may decline over time, but you are strongly urged to take proper legal advice before disclosing it. Similarly, legal advice, whether provided by external lawyers or your authority's in-house legal staff is almost always covered by legal privilege and should not be disclosed.

### **Example**

A member of a County Borough Council who sat on the Council's adoption panel disclosed publically details of a person who had applied to the Panel to adopt a child. He could only have become aware of the information he disclosed by virtue of his membership of the panel. The Adjudication Panel found that the member had disclosed confidential information in breach of the Code. It suspended the member from the Council for 6 months.

## **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](http://www.ico.gov.uk) or by calling 0845 630 6060 or for specific queries, you should ask your monitoring officer or clerk.

Any information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your authority may be required to release it in response to a request. If you do not provide the information to the relevant officer of your authority on request, you will be in breach of the code.

Your authority needs to decide whether to disclose information or whether it may be covered by an exemption. Even if you believe that information you hold is exempt, you must provide it to your authority's relevant officer to allow the authority to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information request has been received.

## **Disrepute**

### **See Paragraph 6.1(a)**

You must not behave in a way which would reasonably be regarded as bringing your office or authority into disrepute at any time.

As a member, your actions and behaviour are subject to greater scrutiny than those 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 will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life. Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute. Inappropriate emails to constituents might well bring the office of member into disrepute.

As outlined in the case example on page 12 above, you must also conduct yourselves in an appropriate manner with others within the confines of a council's building, regardless whether your conduct is likely to be in the public domain.

### **Example**

A community councillor had been abusive to a shop proprietor and two members of her staff and had attempted to obtain a discount on a private purchase by saying it was being bought on behalf of the community council, and when his request for a discount was refused he had made threats against the business. The Adjudication Panel found that the member had brought the office of member into disrepute and suspended him for 9 months.



## Reporting breaches of the Code

### See paragraph 6(1)(c)

If you reasonably believe that a breach of the Code has occurred, you must report it to me and to your monitoring officer. In order to have a reasonable belief that a breach has occurred, you will need to have evidence which supports this. If you are in doubt as to whether a breach has occurred, you should consult your 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 of the likely threshold I will set. Nonetheless, the decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting.

To report a breach, you can contact my office by phone at 0845 6010987, by email to [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk) or via the website at [www.ombudsman-wales.org.uk](http://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 complaint of a breach I will use the two stage test which I have outlined on pages 1 and 2 above. 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 I only have one person's word against another's, it's usually not possible for me to make a finding that a breach has occurred, and in the absence of independent confirmation, I won't usually begin an investigation.

## 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 (a desire to do them harm) or by 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 me and to your monitoring officer, 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.

You should also avoid making complaints which have little or no substance (frivolous complaints) or which are designed mainly to annoy the person complained about.

### **Example**

A member of a county borough council claimed that the leader of the council had offered to provide another councillor and his group of members with office facilities if that councillor supported the leader's preferred candidate for the post of Chief Executive. The evidence supported the leader's position that the two matters were unconnected and that therefore the complaint was malicious. The Adjudication Panel suspended the member making the complaint for 12 months.

## **Co-operating with investigations**

### **See paragraph 6(2)**

You must co-operate with the an investigation when it is being conducted by me or by your monitoring officer using our statutory powers. 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. My office 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. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

## **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. This paragraph applies at all times and not just when you are carrying out your duties as a member. 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. This also applies if you use your office to improve your wellbeing at the expense of others.

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community councils when your council is consulted on planning matters. Similarly, while it is reasonable to expect members' to help constituents apply to the Council e.g. for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

**Example** A member of a County Council failed to declare an interest when the Cabinet was considering whether to approve the complainant for a governor position at a local school when, when the member's husband had also applied for the position. She had sought advice from her Monitoring Officer before attending the meeting who advised her that she had no interest to declare. The Cabinet decided to refer the complainant's nomination for governor back to the governor panel, which then decided to re-advertise the position to members of the Council. By that time the member's husband had been elected as a member of the Council and matched the first criterion for the governor selection process.

The Adjudication Panel found that the member had failed to declare a personal and prejudicial interest in the matter before Cabinet and that by participating in the meeting she had used her position improperly to gain an advantage for another person in breach of paragraph 7(a) of the Code. The Panel decided that no further action needed to be taken in respect of the breaches.

## **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 meetings of your political group. 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. Some councils will permit members to use council supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the council's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.

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

### **Example**

A member of a County Council was found in breach of the code for making improper use of his Council-owned computer equipment for private purposes by downloading inappropriate adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council equipment in breach of the Code and had brought the office of member into disrepute. He was disqualified from being or becoming a member of a local authority for 2 years and 6 months.

## 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 some decisions, such as those taken by planning committees, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you're entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as pre-determination. 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 and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.*

*Predetermination on the other hand would be where you have clearly decided on a course of action in advance of a meeting and are 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.*

(Standards for England have prepared a very useful guidance note on this subject entitled "Understanding predetermination and bias" which is available on their website at [www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk).)

## Considering advice provided to you and giving reasons

### See Paragraph 8

You must have regard to all of the advice you receive from your authority's officers, especially advice from the chief executive, chief finance officer, monitoring officer and chief legal officer where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. 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. I expect 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 highly advisable 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 they believe 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.

It is always helpful, if you can, to get advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice.

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 any 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 but it is not confined to these.

As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the 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.

In reaching decisions where the advice is not provided by the statutory officers, you should still have regard to the advice provided by officers and take it into account in reaching your decision. You may also wish to have regard to other advice you have received and of course, to the position adopted by a political group of which you are a member. In some circumstances, such as planning decisions, you must not vote on the basis of a "whip" imposed by your group. In others, it is reasonable to do so but you should avoid having an entirely closed mind prior to a debate. Again, whatever the reasons for voting against officer advice, it's highly advisable to record them.

## **Example**

A Standards Committee found that a member of the Council had failed to reach a decision on the merits of the circumstances involved when he participated in a meetings of the Planning Committee when it determined a planning application and in doing so had also failed to have regard to the Monitoring Officer's advice. The member had previously spoken out against the development and participated in the debate in the meetings of the Planning Committee, contrary to the advice he had received from his Monitoring Officer. The Standards Committee decided that the member should be censured for failing to reach a decision on the merits of the circumstances and suspended him for 1 month for failing to have regard to the Monitoring Officer's advice.

The member appealed against this determination to the Adjudication Panel. It confirmed that although the member himself genuinely believed he was acting in the best interests of his constituents and with an open mind, having applied an objective test a reasonable onlooker would conclude that he was predetermined. It also was of the view that "having regard" to advice of the Monitoring Officer means accepting such advice in the absence of good reasons not to, and no such reasons were given. It endorsed the decision of the Standards Committee to censure and suspend the member for 1 month in respect of the breaches.

## **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. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming for e.g. childcare.

## **Example**

A member of a County Borough Council was alleged to have used the Child/Dependent Care Allowance to pay his wife to look after their daughter. During the investigation it transpired that he had paid his adult son (from a previous marriage) a regular weekly income to care for the child as and when required. The member was able to provide proof of the payments through receipts and cheque counterfoils. In view of this there was no evidence of any failure on the part of the member to comply with the Code.

## **Gifts and hospitality**

### **See paragraph 9(b)**

It's important that you don't accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so. Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind.

This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your council.

(See also the section on registering gifts and hospitality at page 37)

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could conclude that the interest would influence your vote, or your decision.

The section below is designed to offer guidance on a very complex subject. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and what you need to do if so, you should ask your monitoring officer or clerk for advice.



# 3. Personal and prejudicial interests

## Personal Interests

### See paragraph 10

While you are carrying out your duties, you need to decide if you have a personal interest, and if so, whether you need to disclose it. Most members know that you need to disclose personal interests at meetings, but as you will read below, there are other occasions, such as when speaking to your authority's officers about the matter concerned, when you may also need to do so.

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 your 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;
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
  - 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, or

10. any land in your authority's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest, however, if in doubt consult your Monitoring Officer.

### **Ward and electoral division issues – paragraph 10 (2)(b)**

If a member of the public could reasonably conclude that when you're taking a decision on behalf of the authority as a whole 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 or electoral division, then you would have a personal interest. I have singled this paragraph out because it raises great difficulties in interpretation. At the time of writing, a case is due to be considered by a tribunal set up by the Adjudication Panel for Wales, which I expect to establish the appropriate interpretation. I will issue supplementary guidance on this issue once the decision is available.

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 close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### **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 e.g. a care home with residents supported by social services?

- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority e.g. a private company collecting refuse for the 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 or your close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

### **Who is a close personal associate?**

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, and where you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your monitoring officer or clerk.

### **What if I belong to an authority without wards or electoral divisions?**

If you are a member of an authority that does not have wards or electoral divisions, 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 or one or more of your close personal associates, more than it would affect other people in your authority's area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority's area.

## **Example**

On page 17 above I outlined a case where a member was found to have used her position improperly when participating in a meeting which was considering whether to approve the complainant's nomination for the post of school governor, when the member's husband had also applied for the post. Not only did the Adjudication Panel find that she should have declared a personal interest in the item of business by virtue of her close personal association with her husband, but it also took the view that as there had been a history of animosity directed towards the member by the complainant which had been reported publicly, she also had a personal interest by virtue of her close personal association with the complainant.

A further element to this complaint was that after the complainant had made a complaint to me about the member, the member sat on the Council's Standards Committee when it considered a separate complaint from the complainant against another member. The Adjudication Panel took the view that, in light of the acrimonious relationship between the member and the complainant, the member's participation in the Standards Committee hearing could reasonably have been regarded as affecting the complainant's wellbeing because she was entitled to a fair and unbiased hearing of her complaint.

## **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 reasonably 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 or when the interest becomes apparent. 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 clerk or monitoring officer. Normally, this will mean before, or 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 (see paragraph 12 (3))

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 authority 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, appointed or nominated 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 where you haven't been appointed or nominated by your authority (e.g. a parent governor) unless the business specifically relates to your school
- your role as a member of a health board where you haven't been appointed by your authority

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, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school your child attends.
- Decisions about statutory sick pay if you receive or are entitled to receive it from your authority
- An allowance or payment for members. (I do 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 I consider them to be covered by this dispensation.)

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. Community councillors who have been appointed to the community group or voluntary organisation concerned by their community council e.g. to the board of a community hall, will **not** have a prejudicial interest in decisions made by their council in respect of any grants, loans or other financial assistance. If, on the other hand, you are on such a board in your own capacity and haven't been appointed by your council, then you will have a prejudicial interest.

These exemptions won't apply where the business you are considering is about determining an approval, consent, license, permission or regulation. I consider these descriptions to refer to a narrow category of decisions, such as granting planning consent. A wider interpretation of approval, for example, would cover almost every aspect of your authority's business and was clearly not intended.

### **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. This is an objective test. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

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 any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (e.g. your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or electoral division affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The close personal association 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, an informed reasonable member of the public might conclude that you would be inclined to vote accordingly, whether this is the case or not.

## Examples

A member who on numerous occasions had declared interests in matters but had failed to disclose the nature of his interests and withdraw from meetings of a community council was suspended from office for 9 months by the Adjudication Panel.

Two members of a county borough council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests, and the other member had, despite receiving advice on the declaration of interests had falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of the code to be serious ones. It decided to censure both members.

## 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 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 have declared your personal interest in the matter if you've not previously done so, leave the room (or any other venue in which the meeting is being held including, for example, the location of a site meeting), **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 the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot remain in the public gallery to observe the vote on the matter.

In addition, you must not seek to 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 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 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 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 place where the meeting is held?**

You must leave immediately the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### **What does influencing a decision mean?**

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above.

### **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 place 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.

### **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, unless in the latter case there are executive arrangements in place.***

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:

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests;
- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion);
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected;
- 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 can apply for a dispensation individually and in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. 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.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

## 4. Registration of Interests

### Key points:

All members of authorities have to provide a record of their interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, 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, outlined below. If you are a community councillor, you must declare your interests as and when the Code requires you to do so while conducting your council's business. You should follow any locally adopted arrangements through your clerk.

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, unless you are a community councillor, 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 elected, 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.
  - Any private club, society or association operating within your authority's area

- 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 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 should they become public knowledge.

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**.

It is also good practice to provide a note of any offers of gifts which you have declined.

## 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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