Werrington Parish Council

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Guidance on Local Government Association Councillor Code of Conduct for Local Councils

Written by the LGA - Adapted for local town and parish councils as part of the civility and respect project in October 2022

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Part 1 - Introduction

Introduction

The Model Councillor Code of Conduct 2020 was developed by the Local Government Association (LGA) with support from the National Association of Local Councils (NALC) and the Society for Local Council Clerks (SLCC) in response to recommendations from the Committee on Standards in Public Life in their Local Government Ethical Standards report published in 2019. The Civility and Respect Project endorses the Model Code and aims to encourage its adoption within the local (parish and town) council sector.

The Model Code is a template for local authorities, including local councils, to adopt in whole or with amendments to take into account local circumstances and is relatively short and easy to read rather than an overly-complex legal document as it needs to be accessible to councillors, officers, and the public alike.

The LGA produced supporting guidance which is aimed to help understanding and consistency of approach towards the Code. Produced as part of the Civility and Respect Project, this local council specific guidance builds upon that guidance, making it particularly relevant for the local council sector.

The Model Code, together with the supporting guidance, has been designed to encourage good conduct and safeguard the public's trust and confidence in the role of councillor in local government. While the Code sets out the minimum standards of behaviour expected, together with the guidance it is designed to encourage councillors to model the high standards expected of councillors, to be mutually respectful even if they have personal or political differences, to provide a personal check and balance, and to set out the type of conduct that could lead to complaints being made of behaviour falling below the standards expected of councillors and in breach of the Code.

Any comments on the use of the guidance or suggestions for improvement would be welcomed and should be sent to ModelCode@local.gov.uk **Guidance notes/definitions**

The Model Code uses the terms 'local authority' so where the Model Code is quoted this term is used and means a county council in England, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly, or an eligible parish council. However, this Guidance uses the terms 'local (parish or town) council and 'principal authority' to make a clear differentiation between the tiers of local government.

General principles of Councillor conduct

The Seven Principles of Public Life (also known as the Nolan Principles) outline the ethical standards those working in the public sector are expected to adhere to. The principles apply to all public office holders at all levels including ministers, civil servants, councillors, and local authority officers, as well as private and voluntary organisations delivering services paid for by public funds. The principles are set out in Appendix 2 below.

These principles underpin the standards that councillors should uphold and form the basis for the Code of Conduct, where the principles have been translated into a series of clear

rules. While fundamental to the Code of Conduct, the principles are not part of the rules of the Code and should be used for guidance and interpretation only.

Application of the Model Councillors' Code of Conduct

When does the Code apply?

S27(2) of the Localism Act 2011 says that a local authority must adopt 'a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.'

The term 'capacity' is not further defined in the Act. However, the Model Code states that: "The Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor."

This means it applies when you are carrying out your official duties, for example when you are considering or discussing council business, either as a councillor or representing the council on an outside body.

There is no formal description of what the role of a councillor is, but aside from formal council business it includes promoting and representing the council in the local community and acting as a bridge between the community and the council. The LGA's Guidance for new councillors and NALC's The Good Councillor's Guide are helpful reference points.

The Code does not, therefore, apply solely when you are in council meetings or on council premises.

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communications
- in electronic and social media communication, posts, statements, and comments.

This includes interactions with the public as well as with fellow councillors and council officers.

Acting as a private individual

For something to fall within the Code there must be a clear link to a council function or your role as a councillor. For example, an argument with a neighbour which does not relate to council business would not engage the Code, even if your neighbour happens to know you

are a councillor and therefore complains to the principal authority about being treated disrespectfully.

Examples

A councillor and an officer had a personal relationship. The councillor sent and encouraged the officer to send inappropriate social media messages, including messages of a sexual nature, during office hours. The panel rejected arguments that the councillor had been acting in an entirely personal capacity. It found that the councillor could not divorce himself from his role as the officer's quasi-employer and that, when sending or encouraging the officer to send the messages during working hours, he was acting in his official capacity.

A councillor used her personal Facebook account to accuse her council of being corrupt and the clerk of being incompetent on a village Facebook group. She claimed that she wasn't acting as a councillor as she posted from her personal account and was merely expressing views as a concerned resident. The hearing panel determined that she was acting as a councillor as her post related to council business and she was purporting to be using information she'd received through her role as a councillor.

It is not always immediately apparent in which capacity you are acting, therefore in situations where there may be ambiguity it may be helpful if you can make clear to people in which capacity you are engaging with them.

While the Code does not apply to your non-councillor roles, what you do as a councillor could impact on your position in those other roles.

If you are a member of a political party or group their rules may also require you as a councillor to demonstrate certain behaviours as a private individual and failure to do so can result in sanctions from political groups.

Under the Local Government Act 1972 and the Local Government (Disqualification) Act 2022 councillors can be disqualified from being a councillor due to matters in their private life, such as being subject to a bankruptcy order, receiving a custodial sentence of three months or longer (whether or not suspended) or being subject to a sexual offences order.

In what circumstances might I give the impression to a reasonable member of the public that I was engaged on council business?

When you use or attempt to use your position as a councillor to seek to gain an advantage for yourself or someone close to you or to disadvantage someone this is an attempt to misuse your position and therefore falls within the scope of the Code of Conduct.

A number of factors will need to be taken into account to determine whether or not you had used or attempted to use your position as a councillor.

For example:

- writing to someone on council headed paper or using a council email address may lead someone to assume you were writing in your capacity as a councillor
- handing out a business card where you describe yourself as a councillor may also lead to that assumption
- wearing official council regalia.

Examples

Attempting to misuse your position as a councillor would include if you threaten to use your position improperly to block's someone's grant application. In effect you would be doing something that only a councillor could do even if as a matter of fact, you did not have the power to do so. That may include an assumption, for example, that you would put inappropriate pressure on officers, the clerk or fellow councillors, or lobby behind the scenes for a particular outcome. It should not be up to a member of the public to have to work out whether you are in fact on a finance committee.

Another example would be improperly disclosing confidential information you had received because of your role as a councillor.

A councillor got into an argument with another person at a private party. The other person ran a weekly yoga class at the village hall and the village hall was managed by the parish council. At the end of the argument the councillor told the other person that he was a parish councillor and would make sure that she was no longer able to hire the village hall for her yoga classes. He was found to have breached the Code by invoking his office and seeking to misuse his position to intimidate the other person and to seek to disadvantage the other person, notwithstanding the fact that he did not in reality have the ability to carry out his threat.

Social media postings

Simply describing yourself as a councillor in a social media posting or at the top of your page or in your username or profile, for example, does not of itself mean that every posting you make is covered by the Code. There must be a link within the individual posting or thread to your role as a councillor or to council business. However, even if you do not describe yourself as a councillor you may fall within the scope of the Code if you are discussing council business.

For example, a posting which is simply discussing a recent football match is not covered by the Code even if you have described yourself as a councillor. However, if you make a posting threatening a fellow councillor or officer or a posting detailing your own version of council proceedings contradicting official council communications that would fall within the Code even if you have not described yourself as a councillor as it relates to council business or your role as a councillor.

Each matter would need to be looked at on a case-by-case basis (see guidance on 'disrespect, bullying and harassment further information).

You should be very careful when describing yourself as a councillor as seeing the word "councillor" may lead to assumptions amongst the community that you are acting as a councillor.

To help avoid some of these issues, some councillors have found it helpful to have separate social media profiles for personal and councillor use, though even the strictest privacy settings are no guarantee that posts or actions will remain private. As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a

public meeting. If your council has guidance on the effective use of social media this can help.

NALC (NALC social media) and the LGA (LGA Social Media) have published guidance on councillors and social media.

Examples

Following a heavy snowstorm which meant a local street market could not go ahead a district councillor posted on the local community Facebook page that a certain district council officer should be sacked for failing to put adequate arrangements in place to clear the snow. Even though it was not posted on a council page and he did not explicitly describe himself as a councillor in the post he was found to have breached the Code by treating an officer with disrespect and seeking to put undue pressure on officers.

A councillor who described himself as such in his Twitter profile made insulting and offensive comments about the Prime Minister which led to complaints being made to his principal authority. He was found not to have breached the Code as the comments did not directly relate to his role as a councillor or council business but were seen as wider political comments.

What does acting as a representative of my local authority mean?

You are, for example, acting as a representative of the council when you are sitting on an outside body to which you have been appointed by the council.

You would also be considered a representative of the council where you were attending an external function or conference on behalf of the council or as the council's nominated delegate.

You would not be considered as a representative of the council where you were attending an event in a party-political role, for example at a political party's annual conference. In that situation you would be subject to any relevant party rules.

If you are a member of a political party, matters in party group meetings would also normally not be covered by the Code as they are more matters for a party to manage. However, if you are clearly trying to improperly influence fellow councillors or put undue pressure on them in relation to council business, for example, then relevant provisions of the Code would apply. The same would apply to social media groups you may be a member of, such as a WhatsApp group set up for your local party group.

What if I sit on more than one local authority?

If you sit on more than one local authority, you are subject to the Code and associated procedures of the local authority you are representing at any one time. As such, if you are on a principal authority and a local council, you would be bound by the principal authority code when attending principal authority meetings or speaking to principal authority officers; and bound by the local council code when attending local council meetings or speaking to local council officers.

If your local authorities have adopted the same code, the same rules would apply and, for example, your completed register of interests should be the same for both tiers.

What is a co-opted member?

The Code also applies to co-opted councillors under the Localism Act. A co-opted councillor under the Act is someone who is entitled to vote on any matter to be decided at a council committee or sub-committee.

A local councillor who has been co-opted to fill a casual vacancy where an election has not been held is also covered by the Code in the same way as if they had been elected.

It does not, therefore include non-councillor members of council committees who do not have voting rights.

However, it would be good practice to ask such people to agree to abide by the Code of Conduct and to inform the monitoring officer of any interests they might have. While they would not formally fall within the statutory framework for complaint handling, they can be removed from their role by the council should they be found to have committed a serious breach of the Code so it is important that they are also aware of the expected standards of behaviour.

Part 2 – General principles of councillor conduct

Respect

As a councillor:

I treat other councillors and members of the public with respect.

I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Showing respect to others is fundamental to a civil society. As a representative of the public it is important to treat others with respect and to act in a respectful way. Respect means politeness, courtesy and civility in behaviour, speech, and in the written word. It also relates to all forms of communications councillors undertake, not just in meetings. Rude, offensive, and disrespectful behaviour lowers the public's expectations and confidence in its elected representatives.

Respect

The key roles and responsibilities of councillors; representing and serving your communities and taking decisions on their behalf, require councillors to interact and communicate effectively with others. Examples of councillor interaction and communication include talking to residents, attending council meetings, representing the council on outside bodies, and participating in community meetings and events. In turn this means that as a councillor you are required to interact with many different people, often from diverse backgrounds and with different or conflicting needs and points of view.

You will engage in robust debate at times and are expected to express, challenge, criticise and disagree with views, ideas, opinions, and policies. Doing these things in a respectful way will help you to build and maintain healthy working relationships with fellow

councillors, officers, and members of the public, it encourages others to treat you with respect and helps to avoid conflict and stress. Respectful and healthy working relationships and a culture of mutual respect can encourage positive debate and meaningful communication which in turn can increase the exchange of ideas, understanding and knowledge.

Examples of ways in which you can show respect are by being polite and courteous, listening and paying attention to others, having consideration for other people's feelings, following protocols and rules, showing appreciation and thanks and being kind. In a local government context this can mean using appropriate language in meetings and written communications, allowing others time to speak without interruption during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects.

Disrespectful behaviour

Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.

Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment of others. It is subjective and difficult to define. However, it is important to remember that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour.

Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, attempts to shame or humiliate others in public, nit-picking and fault-finding, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.

Disrespectful behaviour can be harmful to both you and to others. It can lower the public's expectations and confidence in you and your council and councillors and politicians more generally. It influences the willingness of fellow councillors, officers, and the public to speak up or interact with you because they expect the encounter will be unpleasant or uncomfortable. Ongoing disrespectful behaviour can undermine willingness of officers to give frank advice, damage morale at a council, and ultimately create a toxic culture and has been associated with instances of governance failure.

Freedom of expression

The requirement to treat others with respect must be balanced with the right to Freedom of expression. Article 10 of the European Convention on Human Rights protects your right to

hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.

However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. Democracy depends on people being free to express, debate and criticise opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting. A balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.

Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly made statements in a political context but it does not protect statements which the publisher knows to be false. Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public

duties by others. However, gratuitous personal comments do not fall within the definition of political expression.

Public servants such as local government officers are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians such as councillors. Officers do not necessarily have the same right of reply to such comments as councillors do and councillors should take care not to abuse or exploit this imbalance.

Recent case law has confirmed that local authority officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to offensive, abusive attacks and unwarranted comments that prevents them from carrying out their duties or undermine public confidence in the administration.

Is the Respect provision of the Code a gag on councillors?

This provision of the Code (Paragraph 1) is not intended to stand in the way of lively debate in councils. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through councillors' arguments and public debate are an essential part of the cut and thrust of political life. Councillors should be able to express their opinions and concerns in forceful terms. Direct language can sometimes be appropriate to ensure that matters are dealt with properly. The Code is not intended to

stifle the expressions of passion and frustration that often accompany discussions about council business.

Can councillors challenge officers?

In the everyday running of a council, it is inevitable that councillors will have disagreements with officers from time to time. Councillors can challenge and express disagreement with policies and procedures and this disagreement might, in the appropriate context, manifest itself as challenge to the way in which an officer or officers handled particular matters.

However, councillors should not raise issues about an officer's performance unless it is done in the correct way and at the appropriate forum in accordance with your council's processes and procedures. It should not be raised in a public meeting or through a published attack in the media.

If a councillors' conduct is unfair, unreasonable, or demeaning the Code will be relevant. If a councillor's challenge is abusive or offensive it is likely to breach the Code.

What kinds of conduct are not covered?

A very clear line must be drawn between the Code of Conduct's requirement of respect for others, including councillors with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.

What if a member of the public is being unnecessarily disrespectful to me?

Councillors are allowed to respond to criticism, and where that criticism is robust, then they can be robust in response. However, councillors should always seek to try to be civil and demonstrate leadership in their communication. Even where councillors have been wrongly accused, responding in an angry, defensive way can often escalate the situation.

There has been a growing tendency for members of the public to use social media channels to unfairly criticise councillors. For this reason, many councils and County Associations now offer social media guidance and training to councillors in addition to the civility in public life resources available on the LGA's website.

Examples

The complaint alleged that the councillor posted on their blog a highly critical comment and an offensive caption about a former councillor, who had passed away and whose funeral had taken place the previous day. The councillor was found to have breached the provisions of his council's Code of Conduct relating to councillors treating others with respect; as well as conducting themselves in a manner which could reasonably be regarded as bringing their role or their authority into disrepute.

The complaint alleged that a councillor commented under a pseudonym on a village Facebook group referring to possible nepotism in the awarding of funding to a community group by the council. He was found to have breached the Code of Conduct in making the posts because he had failed to treat others with respect and, in doing so, he had conducted himself in a manner which brought his role and his council into disrepute.

The complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to the complainant, a police officer, and also made a number of unfounded allegations about him during two telephone calls to a police station made in his capacity as a councillor. It was found that the comments amounted to an unacceptable personal attack on the complainant and that the councillor had breached the respect provisions in his council's Code of Conduct.

Bullying

As a councillor:

I do not bully any person.

Bullying, harassment, discrimination, and victimisation (either directly or indirectly) are unacceptable and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.

Bullying may be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Bullying may be obvious or be hidden or insidious. Such conduct is usually part of a pattern of behaviour which attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

Bullying can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Bullying behaviour may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

Bullying can affect anyone, in any career, at any time, at any level and within any workplace. Such behaviour can take the form of easily noticed, physically threatening or intimidatory conduct with immediate impact, or it can take place behind closed doors, or be much more subtle or camouflaged and difficult to identify, at least at first. It can start, for example, with what appear to be minor instances, such as routine 'nit-picking' or faultfinding, but which become cumulative or develop into more serious behaviour over time, enabling the perpetrator to isolate and control the person.

Some bullies lack insight into their behaviour and are unaware of how others perceive it. Others know exactly what they are doing and will continue to bully if they feel they are unlikely to be challenged. Bullying can sometimes be overlooked, as a result of common euphemisms being used by way of explanation or justification, referring to someone as having a "poor leadership style" or a "bad attitude," for example, or to the problem being due to a "personality clash".

You should always be mindful of the overall potential impact of the behaviour on others. First and foremost, bullying can have a significant impact on the recipient's well-being and health. Bullying can have an impact on a local council's effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave. Bullying can impact on a councillor's ability to represent their residents effectively. It can also discourage candidates from standing in local elections, making local councils less representative of their communities, and impacting local democracy.

Like disrespectful behaviour, bullying can be difficult to define. When allegations of bullying are considered it's likely that the person handling the complaint will consider both the perspective of the alleged victim, and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied.

Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual's conduct or behaviour, or when the behaviour by both the complainant and councillor contributed equally to the breakdown in relations. However, the cumulative impact of repeated 'minor' incidents should not be underestimated.

Examples of bullying include but are not limited to:

- verbal abuse, such as shouting, swearing, threats, insults, sarcasm, ridiculing or demeaning others, inappropriate nicknames, or humiliating language
- physical or psychological threats or actions towards an individual or their personal property
- practical jokes
- overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures
- inappropriate comments about someone's performance

abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations
- ostracising or excluding someone from meetings, communications, work events or socials
- sending, distributing, or posting detrimental material about other people, including images, in any medium
- smear campaigns.

Does this mean that councillors cannot raise concerns about officers or fellow councillors?

Bullying behaviour should be contrasted with the legitimate challenges which a councillor can make in challenging policy or scrutinising performance. An example of this would be debates in council meetings about policy or asking the clerk to explain the rationale for the guidance they have given. You are entitled to challenge fellow councillors and officers as to why they hold their views. However, if your criticism is a personal threat or abusive or offensive in nature, you are likely to cross the line of what is acceptable behaviour.

Preventing bullying conduct from developing

Ideally, a culture of honest and clear communication should be sought, with respect for the individual and for the confidentiality required when managing individual performancerelated issues. The bullying of officers might be reduced by establishing a specific protocol, which addresses issues such as councillor-officer work relations and appropriate behaviour (Councillor - officer protocol). The protocol can include such matters as acceptable times to contact the clerk by telephone at home or call at the clerk's home on council business.

Officers also need to be mindful that councillors can come from a wide range of backgrounds and may have been part of workplaces where the culture and expected standards are very different from what the clerk or other officers expect; as a result, the councillor simply may not be aware of the impact that their communications have had on the officer. Early discussion about emerging issues is important to help avoid matters escalating and help establish more effective working arrangements for the future.

Bullying and harassment and the law

In some cases, acts of bullying or harassment can be civil offences, which can be brought to an employment tribunal or a county court.

In some cases, conduct that amounts to bullying and harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of bullying or harassment that may constitute a criminal offence. Examples may include, but are not limited to:

- physical assault
- making threats of violence or death threats
- stalking
- hate crimes
- sexual harassment

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Intimidation of councillors

Councillors can face behaviours which could amount to bullying and intimidation when carrying out their role.

The LGA and the Welsh Local Government Association have jointly developed a 'Councillors' guide to intimidation: Practical steps that you and your local authority can undertake to protect yourself as a person in a public position' . The guide covers topics such as how to handle abuse, both face-to-face, letters or online, guidance on personal safety, lone working and online abuse and the legal and practical remedies, including the nature of the criminal offences involved.

Harassment

As a councillor:

I do not harass any person.

The Protection from Harassment Act 1997 states that harassment includes behaviour which alarms a person or causes a person distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person. Harassment of any kind whether direct or indirect is in no-one's interest and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.

Like bullying, harassment can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Harassment may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. It may manifest obviously or be hidden or insidious.

The factors likely to be considered when assessing allegations of harassment are whether the councillor knows or ought to know that their actions constitute harassment, whether a reasonable person would consider the actions to be harassment and the impact of the behaviour/conduct on victim.

Examples of harassment include but are not limited to:

- sending unwelcome emails
- unnecessarily repetitive, intrusive questioning
- unwelcome physical contact such as touching or invading 'personal space'
- haranguing
- intimidation
- inappropriate remarks or questioning such as comments about someone's appearance, lewd comments, and offensive jokes
- overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures
- inappropriate comments about someone's performance

placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations
- sexual harassment

What does the law say about harassment?

In some cases, acts of harassment can be civil offences, which can be brought to an employment tribunal or county court.

In some cases, conduct that amounts to harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of harassment that may constitute a criminal offence. Examples may include, but are not limited to physical assault:

- making violent or death threats
- stalking
- hate crimes
- sexual harassment

Example

The complaint alleged that a councillor had behaved in a disrespectful and harassing manner towards two female councillors and female officers. It was established that the councillor had made unwarranted and inappropriate physical contact with the councillors and officers at an official event and had also made remarks towards the officers which were patronising and demeaning. The councillor was found to been in breach of the Code of Conduct.

Discrimination

As a councillor:

I promote equalities and do not discriminate unlawfully against any person.

Councillors have a central role to play in ensuring that equality is integral to the council's performance and strategic aims They can articulate the council's vision and public commitment to equality across public services.

The Equality Act 2010 imposes positive duties on local authorities to promote equality and to eliminate unlawful discrimination and harassment. Under the Act your council may be liable for any discriminatory acts which you commit as a councillor.

This will apply when you do something in your official capacity in a discriminatory manner. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your council's fulfilment of its positive duties under the Act. Such conduct may cause your council to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct. If you are unsure about the particular nature of the duties of your council you should seek advice from the clerk.

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Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex and sexual orientation

There are four main forms of discrimination:

Direct discrimination: treating people differently because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.

Indirect discrimination: treatment which does not appear to differentiate between people because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation but which disproportionately disadvantages them.

Harassment: engaging in unwanted conduct on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation, 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.

Examples of discriminatory behaviour include but are not limited to:

- exclusion or victimisation based on the Protected Characteristics
- treating someone less favourably or limiting their opportunities based on any of the Protected Characteristics
- comments, slurs, jokes, statements, questions, or gestures that are derogatory or offensive to an individual’s or group’s characteristics
- promoting negative stereotypes relating to individual’s or group’s characteristics
- racial or ethnic slurs, insults, or jokes
- intolerance toward religious customs, conventions and practices
- mimicking, mocking, or belittling a person’s disability
- homophobic, biphobic or transphobic comments or slurs
- discriminating against pregnant people or mothers
- declaring (‘outing’) someone’s religion or sexuality or threatening to do so against their will
- deliberate, unwarranted application of a council’s practice, policy or rule in a way that may constitute indirect discrimination

instructing, causing, inducing, or knowingly helping someone to commit an act of unlawful discrimination under the Equality Act 2010.

A councillor's personality and life experiences will naturally incline them to think and act in certain ways. They may form views about others based on those experiences, such as having an affinity with someone because they have a similar approach to life or thinking less of someone because they are from a different generation. This is known as "unconscious bias" and it can lead people to make decisions based on biases or false assumptions. Councillors need to be alert to the potential of unconscious bias and ensure they make decisions based on evidence, and not on assumptions they have made based on biases.

How can councillors cause their council to be in breach of the Equality Act?

The Code of Conduct is not intended to stifle democratic debate. Councillors should always remember that Article 10 of the European Convention on Human Rights gives a high level of protection to comments that are genuinely made during political debate, even if most people would find them offensive.

Some councillors have particular roles which may give a higher risk for the potential for discrimination; for example, if you are on an appointment panel for a position in the council, or you are able to award local grants in the neighbourhood and will need to decide which organisations to support.

Merely arguing, or even voting, against a proposal which is aimed at complying with a positive anti-discriminatory duty would not be enough by itself to risk breaking this part of the Code. Simply having a party-political or personal position on an issue is unlikely to amount to a breach of this provision because it does not, of itself, involve the council doing anything.

Under the Equality Act 2010, a council is made liable for any discriminatory acts which a councillor commits. This will apply where they say or do something in their official capacity in a discriminatory manner.

Examples

The complaint alleged that a councillor 'liked' several racially discriminatory comments on social media and one comment advocating violence against Travellers. The hearing panel found that 'Liking' of the offensive comments did amount to a failure to treat those who were the subject of such comments with respect and a failure to promote equalities in breach of the Code of Conduct.

A councillor was a member of the council's recruitment panel to appoint a new clerk. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the councillor said, "good candidate, shame he's black". The hearing panel found that the Code of Conduct had been breached.

Impartiality of officers

As a councillor:

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I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the council as a whole. They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can 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. However, 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.

Both councillors and officers are servants of the public and are indispensable to one another. Together, they bring the critical skills, experience and knowledge required to manage an effective council.

At the heart of this relationship, is the importance of mutual respect. Councillor-officer relationships should be conducted in a positive and constructive way. Therefore, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy, should show mutual appreciation of the importance of their respective roles and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

Councillors provide a democratic mandate to the council and are responsible to the electorate whom they represent. They set their council's policy framework, ensure that services and policies are delivered and scrutinise council services.

The chair of the council and committee chairs may have additional responsibilities. These responsibilities will result in increased expectations and relationships with officers that are more complex. Such councillors must still respect the impartiality of officers and must not ask them to undertake work of a party-political nature or compromise their position with other councillors or other officers.

Officers provide the professional advice and managerial expertise and information needed for decision making by councillors and to deliver the policy framework agreed by councillors. They are responsible for implementing decisions of councillors and the day-today administration of the council.

The roles are very different but need to work in a complementary way.

It is important for both sides to respect these differences and ensure that they work in harmony. Getting that relationship right is an important skill. That is why the Code requires councillors to respect an officer's impartiality and professional expertise. In turn officers should respect a councillor's democratic mandate as the people accountable to the public for the work of the council. It is also important for a council to have a councillor-officer protocol councillor-officer protocol which sets out how this relationship works and what both councillors and officers can expect in terms of mutual respect and good working relationships.

Officers may sometimes give you advice that you do not want to hear or does not suit your views. They must be allowed to do this without fear of recriminations to allow for good decision-making looking at all relevant options.

That means in your dealing with officers you must not seek to influence them improperly or put undue pressure on them. For example, you should not get officers 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.

Officers are required to remain politically neutral and not demonstrate their support for specific parties or candidates.

The fundamentally held principle is that "the local government system of the UK has long resided on a bond of trust between elected members and a permanent corps of local government officer… that relationship of trust stems from the right of council members to expect that they are being assisted in their functions by officers who are politically neutral and whose loyalty is to the council as a whole[1]".

Examples

A council was renewing its grounds maintenance contract and was seeking quotes from suppliers. A councillor became involved in the process and sought to influence the clerk on where to seek the quotes, he also sent discourteous and disrespectful correspondence to the clerk. In doing so, he lost sight of his overall responsibility to the council to allow its officers to perform their functions. He was found to have breached the Code of Conduct.

What does working on behalf of the authority mean?

Councils deliver services in a range of ways. Often services will have been contracted out to outside bodies. For example, if you have a play area, equipment repair services may be carried out by outside contractors. Their employees delivering that contract are doing so on behalf of the council and you should not use your position to interfere improperly in delivery of that service.

What if I disagree with the views of an officer?

You are perfectly entitled to disagree with officers. They are there to give you impartial professional advice and you do not need to accept their advice without question. When you do question them however, you should treat them with respect and recognise that they are professionals.

If you feel dissatisfied with the advice you are given you should raise through appropriate management channels in line with your council's councillor-officer protocol , see guidance on respect, bullying and harassment in Part 2.

Where you have a declarable interest in a matter you are discussing with an officer you should make that clear to the officer – see guidance on declarations of interest in Part 3. Where it is an interest which would stop you from taking part in a meeting you should not discuss those matters with officers except where you are seeking professional advice in the same way as any member of the public could – for example, assistance with making an application – and the officer should make a note that an interest has been declared. If you need to speak to an officer about the matter, you should arrange a meeting as a

[1] Ahmed v United Kingdom (2000) 29 EHRR 1

member of the public and not seek to use your position to gain preferential or quicker access.

Having regard to officer advice

Councillors take decisions every day that affect the lives of those who live and work within your community. It is therefore important that those decisions are made having regard to all available evidence and weighing up all sides of the argument.

Decisions can be challenged if they are unreasonable, and the council could find itself facing an expensive legal bill if it takes a decision which is unlawful. When considering any decision, you must have regard to any professional advice you have been offered. The Proper Officer and the Responsible Financial Officer (both usually the clerk) have a statutory duty to report formally to the council where they believe a council action or expenditure is, or may be, unlawful. Similarly, when it comes to elections, you will need to have regard to any advice given to you by the returning officer of your principal authority who is entirely independent of and separate from the council and is required to be politically neutral.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by your council. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected. Where councillors disagree with officer recommendations in making a decision, councillors will need to take particular care in giving clear reasons for the decision.

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

If in any doubt – be safe and always seek advice from your clerk before taking any action.

Councils should adopt a protocol for councillor-officer relations and the document should be accessible on their websites.

Confidentiality and access to information

As a councillor:

I do not disclose information:

a. given to me in confidence by anyone
b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless
    I. I have received the consent of a person authorised to give it;
    II. I am required by law to do so;

III. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or IV. the disclosure is:

i. reasonable and in the public interest; and
ii. made in good faith and in compliance with the reasonable requirements of the local authority; and
iii. I have consulted the monitoring officer prior to its release.

I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer, or my business interests.

I do not prevent anyone from getting information that they are entitled to by law.

Councils must work openly and transparently. Their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents, and other information relating to or held by the council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

Confidential information

While council business is by law generally open and councils should always operate as transparently as possible, there will be times – for example, when discussing a named individual, confidential HR matters or commercially sensitive information – when it is appropriate for council business to be kept confidential or treated as exempt information.

In those circumstances, you must not disclose confidential information, or information which you believe to be of a confidential nature, unless:

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

Disclosure in the public interest

Disclosure ‘in the public interest’ is only justified in limited circumstances, when all the following four requirements are met:

- the disclosure must be reasonable
- the disclosure must be in the public interest
- the disclosure must be made in good faith
- the disclosure must be made in compliance with any reasonable requirements of your council

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

The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

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

The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- a criminal offence is committed.
- your council or some other person fails to comply with any legal obligation to which they are subject.
- a miscarriage of justice occurs.
- the health or safety of any individual is in danger.
- the environment is likely to be damaged.
- that information tending to show any matter falling within the above is deliberately concealed.

The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a political advantage or to settle a score with a political opponent.

The fourth requirement, that you comply with the reasonable requirements of your council, means that before making the disclosure you must comply with your council's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

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

consequences of its disclosure, and on any factors, which may justify its disclosure despite these potential consequences. If in doubt you should always seek advice from the clerk. Always keep a note of the reason for your decision.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, where the information disclosed is protected by legal professional privilege or where the information contains sensitive information as defined under the Data Protection Act 2018.

Circumstances in which a council can treat information as confidential

The presumption under local government law is that council business is open unless it falls within a specific category of confidential or exempt information as set out in legislation. These categories are:

- information given to the council by a Government Department on terms which forbid its public disclosure or
- information the disclosure of which to the public is prohibited by or under another Act or by Court Order.

Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

Exempt information means information falling within the following categories (subject to any condition):

- relating to any individual.
- which is likely to reveal the identity of an individual.
- relating to the financial or business affairs of any particular person (including the council holding that information).
- relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the council or a Minister of the Crown and employees of, or officer-holders under the council.
- in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- which reveals that the council proposes:
    - to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
    - to make an order or direction under any enactment
    - relating to any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.

Where information is legally classified as ‘confidential’ under the above categories the public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

Where an officer recommends that a report to a decision-making committee should be treated as exempt information under the above categories the committee must still agree that the matter should be heard in a closed session. The committee may disagree with any recommendation and decide that those legal tests have not been met; or they may agree that those tests have been met but nevertheless it is in the public interest that the matter be considered in an open session. Again, you should keep a record of the rationale for the decision.

Once the council has agreed that the matter be treated as exempt, public access to relevant reports, background papers and minutes will also be excluded and an individual councillor must abide by that collective decision or risk breaching the Code if they disclose that information (papers and content of discussion) without lawful excuse.

Does confidentiality under the Code apply only to information which is classified as confidential or exempt by law?

No. The Code goes wider than matters simply considered in a formal council setting. Information is a broad term. It includes facts, advice, and opinions. It covers written material, including tapes, videos, CDs, DVDs, and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all the following apply:

- it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
- it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
- disclosure of it would be detrimental to the party wishing to keep it confidential.

For example, you may be told confidential information by a resident in the course of your duties. That is why the Code is written broadly to cover information classed as confidential which you may come across in your duties.

You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential.

Examples

A resident had made a complaint against a council officer. The officer asked one of the councillors for information as to what was happening with the case and the councillor inadvertently shared confidential information. This was found to be a breach of the Code. A councillor circulated information about an officer's medical condition to other councillors. He was found to have disclosed information which should reasonably be regarded as being of a confidential nature and without the officer's consent in breach of the Code of Conduct.

What does consent by the person authorised to give it mean?

If somebody, for example a resident, has told you something in confidence – for example in the line of casework – you may later want to put that in the public domain as part of

pursuing that case. You should always check with the individual before you disclose something you believe is confidential to ensure that they are comfortable with that information being disclosed. You should also be clear with them as to how you may use the information, they give you to help resolve their issue.

In what circumstances am I required to disclose confidential information by law?

This would be where a law enforcement or regulatory agency or the courts required disclosure of information.

In what way could I use information I have obtained to advance myself or others?

As a councillor you will receive commercially sensitive or other confidential information. You must not use that information to your own advantage. For example, if you know the council is considering the purchase of a piece of land, you should not use that information in your private dealings to seek to purchase the land.

How does this relate to the Data Protection Act 2018?

As part of their role councillors will receive personal information. They should seek to ensure they are familiar with how the Data Protection Act 2018 applies to their role in handling such information through training, and if they are not sure to seek advice from the clerk or another appropriate officer in the council.

Although councillors are not required to register as a data controller, they will receive personal information from residents in their area. They should only use it for the purpose for which it has been given and must ensure this information is held securely and only share with others that are entitled to it.

In contrast, the council is responsible for information they provide to councillors and ensuring they know how it can be used.

Access to information

Transparency is a very important principle underpinning local democracy and public decision-making. The public are entitled to see information about the way decisions are made unless there are specific reasons why that information is confidential. Your council should have a publication scheme setting out what information is accessible to the public and you as an individual councillor 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 council which they have a right to access.

If in doubt seek advice from the clerk or other relevant council officers.

The 'need to know'

As a councillor, you are not automatically entitled to access all information the council holds. For example, the council may deal with highly confidential and sensitive information about employees.

In addition to rights set out in law or conferred by your standing orders, you have a right to inspect documents if you can demonstrate a "need to know". This isn't a right to a roving commission but must be linked to your performance of your duties and functions as a

councillor. For example, the need could more easily be demonstrated by membership of a relevant committee, such as a staffing committee than simply because you are interested in seeing the information. Councils have more justification for denying free access to particularly sensitive papers such as staffing records. You should not seek to get information if you have a declarable interest in it.

If you feel you are not being given access to information you seek, you can seek advice from the clerk.

You can also exercise the “need to know” in respect of attending meetings. Access to Information Rules set out rights of access to documents for councillors to carry out their functions.

Where you are given access to documents which are not available to members of the public, you should ensure that any confidential information is used and protected in an appropriate and secure manner and shared with authorised persons only.

Can I use council information for matters outside the council?

A councillor is entitled to access information held by the council for the performance of their duties as a councillor. If a councillor wishes to use council information for any purpose other than in connection with their duties as a councillor, and that information is not in a publicly available document or other publicly viewable state (e.g on a council webpage). However, that councillor should submit a freedom of information request so that it can be given to them to use freely.

The general rule is that any information held by the council and given directly to a councillor may only ever be used for the purpose for which it was provided. That purpose may add particular restrictions, for example where it relates to an individual resident or sensitive matter. The purpose should not be for anything other than use in connection with the proper performance of the councillor’s duties as a councillor. The exceptions to this are where the information has already been published, it has been given as a result of a request under Freedom of Information or Environmental Information Regulations or it is in the public interest (‘whistleblowing’) for which provisions are made in the Code of Conduct as explained above.

Please see the ICO website for helpful guidance on data protection and freedom of information.

Disrepute

As a councillor:

I do not bring my role or local authority into disrepute.

As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an

adverse impact on your role, other councillors and/or your council and may lower the public's confidence in your ability to discharge your functions as a councillor or your council's ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

- reducing the public's confidence in them being able to fulfil their role; or
- adversely affecting the reputation of your council's councillors, in being able to fulfil their role.

Conduct by a councillor which could reasonably be regarded as reducing public confidence in their council being able to fulfil its functions and duties will bring the authority into disrepute.

For example, circulating highly inappropriate, vexatious or malicious e-mails to residents, making demonstrably dishonest posts about your council on social media or using abusive and threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your council in a public arena might well be regarded as bringing your local authority into disrepute.

What distinguishes disrepute to "your role or local authority" from disrepute to you as a person?

The misconduct will need to be sufficient to damage the reputation of the councillor's role or council, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of conduct may damage the reputation of an individual but will rarely be capable of damaging the reputation of the role of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the role of councillor or to the authority in particular cases:

- Situations where councillors have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their role. For example, councillors using their position to secure a secret personal profit.
- Similarly, situations where a councillor defies important and well-established rules of the council for private gain.
- Where a councillor engages in conduct which directly and significantly undermines the council's reputation as a good employer or responsible service provider.

Examples

A councillor posted a tweet reading "Cllr Blogs why don't you just throw in the towel, just go before you cause any more damage to the reputation of the council. You have failed. I hope that the Serious Fraud Office is brought in to investigate your conduct. #failedleadership." The complainant stated that she found the tweet 'very offensive' and bullying and also considered that the tweet would reasonably bring the councillor's office

and the authority into disrepute. The councillor was found to have brought his authority into disrepute by reducing public confidence in the council.

A councillor brought his role and authority into disrepute by taking advantage of a council mistake and failing to prevent council-employed contractors from working on his privatelyowned garden. The council mistakenly sent a tree surgeon to perform hedge maintenance on his land, which bordered on council-owned land. The councillor only told the council about the mistake after the work had been completed and then said he could not be charged for the work.

The chair of a council made a deeply inappropriate remark at a council meeting that was reported in the local media and was accused of bringing his role and authority into disrepute. It was clear in both the meeting and the local media reporting that other councillors expressed concerns about his comments and found them inappropriate. It was found that he had not brought his authority into disrepute but that he had brought his role into disrepute.

Misuse of position

As a councillor:

I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a councillor provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

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 councillor.

Involving yourself in a decision in which you have an interest, to seek to benefit yourself or another would be a breach of this paragraph of the Code. For guidance on how to conduct yourself when you have an interest and how to balance your rights as an individual and your responsibilities as a public decision maker see the chapter on registration of interests.

Councillors who own land, or whose relatives or close associates own land, need to be particularly cautious where planning matters are concerned. This applies equally to local councillors when your local council is consulted on planning matters. Similarly, while it is reasonable to expect councillors to help local groups apply to the council, for example, for a grant, it is quite improper to seek to influence the decision to be taken by the council and would also be in breach of paragraph 3 of the Code.

What kinds of attempts to advantage or disadvantage would be improper?

There are circumstances where it will be proper for a councillor to seek to confer an advantage or disadvantage and other circumstances where it will not.

Being a councillor can involve making hard choices and balancing a range of interests.

Most decisions will inevitably benefit some people and will be to the detriment of others. It's important when you make those decisions to make them in what you think is the public interest and not be influenced by private interests.

For example, there can be no objection to councillors voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that councillors' attempts to secure this advantage are clearly part and parcel of their duties as a local representative. Therefore, these activities are not improper.

The term 'improperly' is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that councillors are elected or appointed to public office to serve the public interest.

A councillor's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a councillor's public position to promote private interests over the public interest will be improper.

What if the attempt to confer an advantage or disadvantage fails?

The wording of the Code of Conduct makes it clear that the use of position provision (paragraph 6) covers failed attempts as well as situations where an advantage or disadvantage has actually been achieved.

For example, if you have tried to influence fellow councillors to vote in a particular way which would be to your personal advantage and/or that of your family/close associates you would have breached this provision of the Code even if they did not in fact vote that way.

Examples

Most alleged improper uses of position are in connection with matters in which the councillors have interests.

A councillor who was a 'joint co-ordinator' of a community group did not notify the council of her position in this group. She took part in the considerations and voted on the decision to negotiate a new lease in respect of a workshop used by this community group. A standards committee found that she had used her position improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the council.

A councillor was found to have improperly used his position and secured an advantage for a member of the public by asking the clerk to make a payment which had not been approved by the council in breach of the Code of Conduct. The payment was for repairs to a private road used by the councillor to get to his allotment.

Misuse of resources and facilities

As a councillor:

I do not misuse local authority resources.

I will, when using the resources of the local authority or authorising their use by others:

- act in accordance with the local authority's requirements; and
- ensure that such resources are not used for political purposes unless
- that use could reasonably be regarded as likely to facilitate, or
- be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

You may be provided with resources and facilities by your council to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment
- transport
- access and use of council buildings and rooms

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the council's own policies regarding their use.

You must make sure you use the council'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 council's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act 1986.

The Code of Recommended Practice on Local Authority Publicity published by the Department for Communities & Local Government provides guidance on the content, style, distribution, and cost of local authority publicity.

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

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

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

However, your council may authorise you to use its resources and facilities for legitimate political purposes in connection with your council's business. For example, dealing with correspondence from your residents. In this case, you must be aware of the limitations placed upon such use for these purposes. Using your council's resources outside of these limitations is likely to amount to a breach of the Code.

You should never use council resources purely for private purposes, for example using a photocopier to print off flyers for your business unless your council's procedures allow for you to repay any costs accrued.

What are the "resources of the local authority"?

The resources of the council include services and facilities as well as the financial resources of the council.

Resources could include any land or premises, equipment, computers, and materials. The time, skills, and assistance of anybody employed by the council, or working on its behalf, are also resources, as is information held by the council which it has not published.

What constitutes using resources "improperly for political purposes"?

The Code acknowledges that party politics can have a proper role to play, both in the conduct of council business and in the way that councillors carry out their duties.

However, councillors and clerks will need to exercise considerable care to ensure that this provision is not abused. You must ensure that there is a sufficient connection between the use of resources and the business of the council. Only improper use of resources will be a breach of the Code of Conduct.

This part of the Code complements Section 2 of the Local Government Act 1986, which prevents the publication of material "designed to affect public support for a political party". The Code, however, goes further than the Code of Recommended Practice on Local Authority Publicity. It covers not only the publication of campaigning material but also any other activity that is intended to promote purely party-political interests.

You must have regard to any applicable local authority code of publicity made under the powers contained in Section 4 of the Local Government Act 1986. Publicity is defined as "any communication, in whatever form, addressed to the public at large or to a section of the public". It will cover meetings, websites, and social media postings as well as printed and other written material.

You should be particularly scrupulous about the use of council resources when elections are pending, particularly those resources relating to publicity. When using the council's resources in these circumstances, you should not appear to be seeking to influence public opinion in favour of you, your party colleagues, or your party.

How do you know what the council's requirements for the use of resources are?

Your council should have a protocol dealing with use of council resources. A typical protocol would cover the following topics:

- use of council premises
- councillor-officer relationships including use of officer time
- information technology, for example computer equipment and the use of associated software, including the use of such equipment at home
- telephones
- photocopying
- use of stationery and headed notepaper

- postage
- use of council transport
- allowances and expenses

Your council may also have a separate protocol on the use of social media which would also be relevant.

The key principle underlying all such protocols should be that public office and public resources should not be used to further purely private or party-political purposes.

It is worth noting that where you authorise someone such as a family member to use the council's resources, you must check whether the council's rules allow this.

Example

The complaint alleged a town councillor used his computer equipment provided by his council 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. He was found to have misused the council's equipment in breach of the Code and had brought his office into disrepute.

Complying with the Code of Conduct

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the council or its governance. If you do not understand or are concerned about the principal authority's processes in handling a complaint you should raise this with the monitoring officer.

As a councillor:

I undertake Code of Conduct training provided by my local authority.

Councillors should be competent for the work they undertake, and this includes the way in which you conduct yourself when carrying out your role as a councillor. Training helps to develop such competence, ensuring that you understand the Code of Conduct and how it applies to you.

As a councillor you are responsible for your own actions and will be held personally responsible if you breach your council's Code of Conduct. Therefore, it is essential that, where you are offered the opportunity by your council, you equip yourself with sufficient knowledge of the Code to ensure that you comply with it at all times.

I cooperate with any Code of Conduct investigation and/or determination.

The Code of Conduct is a cornerstone of good governance. It is important for public trust that it is seen to be taken seriously by individual councillors as well as the council as a whole.

While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any Code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters on and does not allow

you to put across your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code.

It is equally important if you have made a complaint which the principal authority has decided merits investigation that you continue to cooperate. Complaints made simply to damage the reputation of an individual through inferences but which you are not willing to support through your cooperation will damage relationships and will also damage the reputation of you and your council.

If you are asked to assist the investigator as a potential witness it is again important that you do so to allow as fully rounded a picture as possible to be drawn so that any determination on a case has as much evidence as necessary in order to reach the correct decision. You should let the investigator know if you need any reasonable adjustments made.

I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course. If you seek to intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

When does the duty not to intimidate start and how do I avoid allegations of intimidation?

Once there is the possibility of a complaint that the Code of Conduct has been broken, councillors need to be alert to how their behaviour towards potential witnesses or officers involved in handling of their case may be viewed. However innocently the contact is intended or may appear, great care should be taken when councillors deal with people involved with their case.

You should refer to your principal authority's procedures and protocol for dealing with alleged breaches of your Code of Conduct.

I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

Fair, consistent, and proportionate sanctions help to ensure the integrity of the standards framework and thus maintain public trust and confidence in councillors, your role, and your authorities. It is important that councillors and local authorities take standards of conduct seriously and the use of sanctions helps to demonstrate this.

Failure to comply with sanctions can bring the standards framework into disrepute.

Part 3 - Protecting your reputation and the reputation of the local authority

Registration of gifts, hospitality and interests

Gifts and hospitality As

a councillor:

I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

I register with the monitoring officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

I register with the monitoring officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the council, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered.

However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact the clerk for guidance.

What does "hospitality" mean?

Hospitality can be defined as any food, drink, accommodation, or entertainment freely provided or heavily discounted.

How much detail should I include on the register?

Where you register gifts or hospitality you should include the name of the person or organisation who gave you the gift or hospitality; the date on which you received it; the reason it was given; and its value or estimated value.

How do I know if gifts or hospitality have been offered to me because of my role as a councillor?

The Code says you must register any gift or hospitality received in your capacity as a councillor if the estimated value exceeds £50 or such other limit as agreed by your council.

You should ask yourself whether you would have received the gift or hospitality if you were not on the council. If you are in doubt as to the motive behind an offer of a gift or

hospitality, we recommend that you register it or speak to the clerk before deciding whether to accept it. You should also refer to the council's policy on gifts and hospitality.

You do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should apply common sense when you consider how receipt of a gift might be interpreted. For example, if a birthday present arrives from a family friend who is also the chair of a local community group just before a funding application from the group is due to be considered, then you need to think about how this would be interpreted by a reasonable member of the public.

What about gifts or hospitality I do not accept?

The Code makes it clear that the presumption is that you do not normally accept gifts or hospitality. While gifts or hospitality can be offered for benign reasons it is important for your reputation, the reputation of the council and the need to reassure the public that decision-making is not being improperly influenced that you do not accept gifts or hospitality wherever possible.

Simply accepting gifts or hospitality and then registering it does not mean that it may be seen as reasonable. Accepting an expensive meal from somebody who is negotiating for a contract with the council, for example, is not 'made right' by being recorded on a public register.

There will be times, however, where turning down hospitality or gifts could be seen as causing unnecessary offence. For example, if you have been invited as a councillor to a local festival or faith celebration along with other members of the community then it may be entirely appropriate to accept the hospitality. However, you should always exercise particular caution if the organisers are involved in ongoing negotiations with the council on a particular matter.

Where you are offered a gift or hospitality but decline it you should nevertheless notify the principal authority's monitoring officer. That helps the council to identify if there are any patterns and to be aware of who might be seeking to influence the council.

What about gifts or hospitality that falls below the limit in the Code?

You should always notify the principal authority's monitoring officer of any gift or hospitality offered to you if it could be perceived as something given to you because of your position, especially where the gift or hospitality is from somebody who has put in an application to the council (or is about to) even where that hospitality falls below £50 or the limit set by the council.

While that would not be a matter for the public register it again allows the council to be aware of any patterns.

Also, an accumulation of small gifts you receive from the same source over a short period of say a couple of months that add up to £50 or over should be registered in the interests of transparency.

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 therefore have to estimate how much a gift or hospitality is worth. For example, if you attend a dinner as a representative of the council which has been pre-paid by the sponsors you would need to make an informed judgment as to its likely cost.

What if I'm at an event but don't have the hospitality or only have a small amount?

The best way to preserve transparency is for you to assess the hospitality on offer, whether it is accepted or not. This is because it would clearly not be in your interests to be drawn into arguments about how much you yourself ate or drank at a particular occasion. For example, you may find yourself at a function where relatively lavish hospitality is on offer, but you choose not to accept it. You may go to a champagne reception but drink a single glass of orange juice for example.

As a guide you should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. What you have been offered is the value of the event regardless of what you actually consumed. Clearly where you are in any doubt the prudent course is to register the hospitality.

Is there a minimal threshold where I wouldn't have to notify the monitoring officer?

The Code is about ensuring that there is transparency and accountability about where people may be trying to influence you or the council improperly. However, in the course of your duties as a councillor you will be offered light refreshments or similar on many occasions. It is perfectly acceptable to have a cup of tea or biscuits at a meeting with residents at the local community centre for example and there may be times when an external meeting lasts all day and the organisers offer you a sandwich lunch and refreshments.

The Government's guide to the Bribery Act for employers says that 'the Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure. In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act.'

You should use your discretion and think how it might look to a reasonable person but always seek the views of the clerk if in doubt.

What are 'normal expenses and hospitality associated with your duties as a councillor'?

As well as the minimal threshold hospitality above there may be times when you are paid expenses which include an element for food and drink as part of your role.

The focus of the Code is on the source of the hospitality and its nature. Hospitality does not need to be registered where it is provided or reimbursed by the council or where it is clearly ancillary to the business being conducted, such as an overnight stay for an awayday. Therefore, hospitality at a civic reception or mayor's ball would not need to be registered.

However, the hospitality should be registered if it is provided by a person or body other than the council and is over and above what could reasonably be viewed as ancillary to the business conducted. You might meet dignitaries or business contacts in council offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality.

If you are away at a conference and you are offered entertainment by a private company or individual or attend a sponsored event you should consider registering it.

What if my role involves me attending regular events or receiving gifts or hospitality?

Some roles in a council will inevitably involve being offered more entertainment than others because of the 'ambassadorial' nature of the role. For example, the mayor or chair of the council may be invited to a number of functions.

Although the mayor or chair, for example, may attend some social functions, they are not exempt from the requirement to register hospitality as individual councillors. However, where the hospitality is extended to the office holder for the time being rather than the individual, there is no requirement under the Code to register the hospitality against your individual register. The question a councillor needs to ask themselves is, "Would I have received this hospitality even if I were not the mayor/chair?" If the answer is yes, then it must be registered.

If matters are recorded on a mayor or chair's register any entry on the register should make it clear that gifts or hospitality are being accepted because of the office held and, where possible, any gifts accepted should be 'donated' to the council or to charity or as raffle prizes for example.

Gifts that are clearly made to the council, for example a commemorative goblet which is kept on display in the council's offices, do not need to be registered in the councillor's register of gifts and hospitality. However, such gifts ought to be recorded by the council for audit purposes.

Register of interests

Section 29 of the Localism Act 2011 requires the monitoring officer of the local council's principal authority to establish and maintain a register of interests of members of the council.

You need to register your interests so that the public, council officers and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose 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 disclosed by you or other councillors when making or taking part in decisions, 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.

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the monitoring officer of your council's principal authority the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).

You must register two different categories of interests:

Disclosable Pecuniary Interests – these are categories of interests which apply to you and your partner. The categories are set out in regulations made under s27 of the Localism Act 2011 and knowing non-compliance is a criminal offence.

Other registerable interests – these are categories of interest which apply only to you and which should be registered as an aid to transparency.

Further details about these two categories follow. For guidance on when these interests give rise to a matter which needs to be declared at a meeting see the guidance on declaring interests in Part 3.

Declarations of interest

As a councillor:

I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the monitoring officer of the local council's principal authority to establish and maintain a register of interests of councillors.

You need to register your interests so that the public, council officers and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose 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 disclosed by you or other councillors when making or taking part in decisions, 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.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1 of the Code, is a criminal offence under the Localism Act 2011.

Appendix B of the Code sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from the clerk.

This part of the Code is about the registering of your interests and then how to go about declaring or managing your interests.

At heart there is a simple principle – as public decision-makers, decisions must be made in the public interest and not to serve private interests. However, the rules to set out whether you have an interest or not in any given situation can be complex given the infinite variety of issues that may arise. This guidance is to help you steer a way through those rules.

The Code therefore requires councillors to declare interests in certain circumstances. Disclosure, in the register and at meetings, is about letting members of the public and interested parties know where you are coming from when involved in decision making and is to enable you to be ‘up front’ about who you are and what your conflicts of interest might be. Conflicts of interest in decision making as a councillor, and what in public law is known as ‘apparent bias’, are an established part of the local government legal landscape. The Seven Principles of Public Life and the Model Code require councillors to act impartially (i.e. not be biased) when carrying out their duties (see also guidance on bias and predetermination).

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the council, yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

The object of this part of the Code is therefore twofold.

Firstly, it is to provide an explanation and a guide to the public and councillors as to what is or isn’t a conflict of interest and then how a conflict between the interest you may hold as an individual councillor and the public interest you must hold as a decision maker of a public authority can be best managed.

Secondly, the Code provides a means to hold an individual councillor to account for their actions when they fail to manage that conflict of interest properly and put the decision of the public authority, including the public purse, and decisions around individuals’ daily lives, at risk.

The test at law for apparent bias is ‘would a fair-minded and informed observer, having considered the facts, conclude that there was a real possibility of bias’. This is why you will see this question reflected in the Code when you are asked to consider whether or not you should participate in a meeting where you have a conflict of interest.

The Code contains three different categories of interests – Disclosable Pecuniary Interests (DPI); Other Registerable Interests (ORI); and Non-Registerable Interests (NRI).

For the first two categories these are interests which must be recorded on a public register except in limited circumstances (see guidance on Registration of Interests). The third category do not need to be recorded on the register but will need to be declared as and when they arise.

This means an interest may arise not just from interests already on your register. There will also be times when, although the interest does not personally involve you, it may involve a

relative or close associate. You are not expected to register every interest of those people, but you will need to declare them as and when they might arise. These are referred to in the Code as 'non-registerable interests'.

As a brief summary, the requirements of the Code apply where:

- you or someone you are associated with has an interest in any business of your council, and
- where you are aware or ought reasonably to be aware of the existence of that interest, and
- you attend a meeting of your council at which the business is considered.

You must disclose to that meeting the existence and nature of your interests at the start of the meeting, or when the interest becomes apparent. It is usual to have for any declarations of interest at the start of the meeting but it is good practice also to ask again at the start of any agenda item. For example, members of the public may only be present for a specific item so will not have heard the declaration at the start, and a councillor may only become aware of the interest part-way through the meeting or item in any case.

And there will be times that because your interest is so close to the matter under discussion you will not be able to take part in that item of business. Those circumstances are explained in greater detail for each category of interest below.

This means there are three types of interest which you may have to declare:

- Disclosable Pecuniary Interests (Part A of the Register); • Other Registerable Interests (Part B); and • Non-registerable interests.

Guidance is given below on each of these categories in turn.

Disclosable Pecuniary Interests

(Annex B, paragraphs 4 and 5)

Disclosable Pecuniary Interests (DPIs) were introduced by s30 of the Localism Act 2011. They are a category of interests which relate to the councillor and/or their partner, such as financial interests of you or your partner such as your house or other property, or if you have a job or own a business. The categories are set out in regulations made under the Act and are in Table 1 of Annex B of the Code.

'Partner' is defined by regulations as your 'spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.'

They must be registered and, where they come up in a meeting, declared. Failure knowingly to register or declare a DPI is a criminal offence under the Localism Act.

The Localism Act says that if you are present at a meeting of the Council, or any committee, sub-committee, joint committee or joint sub-committee of the council, and you have a Disclosable Pecuniary Interest in any matter to be considered or being considered at the meeting:

- you may not participate in any discussion of the matter at the meeting

- you may not participate in any vote taken on the matter at the meeting
- if the interest is not registered, you must disclose the interest to the meeting
- if the interest is not registered and is not the subject of a pending notification, you must notify the monitoring officer of the interest within 28 days.

The Act says you need to declare the nature of the interest only if it is not on the public register. In addition, your council's rules might require you to leave the room where the meeting is held while any discussion or voting takes place.

However, the Model Code states that it is important to declare the nature of the interest and to withdraw while the item is being dealt with. This aids transparency for the public and helps avoid accusations that you may be seeking to influence the outcome by remaining in the room even if your council's rules don't explicitly require it.

If you have a DPI, you may in certain circumstances be granted a dispensation to take part (see guidance on Dispensations).

When does a Disclosable Pecuniary Interest arise?

The Localism Act uses the phrase 'you have a DPI in any matter…'

This wording has led to some confusion as to what circumstances would lead to the need to declare a DPI. The Explanatory Notes to the Localism Act say that s31 of the Act "requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered relates to their interest. ... It prohibits a member from participating in discussion or voting on any matter relating to their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations)." [our emphasis].

This means you have a DPI in a matter when the matter being discussed directly relates to your registered interest or that of your partner, rather than simply affecting it.

For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does not directly relate to your registered interest. You may however have a nonregisterable interest (see below) as the application may indirectly affect your property.

Other Registerable Interests

(Paragraphs 6, 8 and 9 of Annex B)

The second category of interests are Other Registerable Interests (ORIs).

If you have an ORI – that is an interest which falls within the categories in Table 2 in Annex B - the Code says you should not participate in the relevant business in two circumstances:

- when a matter directly relates to the finances or well-being of that interest. (paragraph 6); or
- when a matter affects the finances or well-being of that interest to a greater extent than it affects the majority of inhabitants; and a reasonable member of the public would thereby believe that your view of the public interest would be affected (paragraphs 8 and 9).

An interest 'directly relates' to an outside body where the council is taking a decision which directly relates to the funding or well-being of that organisation.

For example, under a) if you are a member of a local group which has applied for funding from the council, or if you are a member of an organisation which has submitted a planning application, the decision directly relates to that organisation.

In such a case you must not take part in any discussion or vote on the matter. You can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. For example, you may want to put forward the group's case as to why it has applied for funding, but representatives from competing organisations would also need to be able to make their case.

If the public are not allowed to address the meeting on that item, you would need, if necessary, to get another councillor who did not have an ORI to make any relevant case.

If the council is simply discussing that outside organisation but not making a decision which relates to its finances or well-being that does not directly relate to the organisation as there is no direct impact on the organisation which would give rise to a conflict of interest.

Under b) if you are on the committee of the local village hall and an application for a licence for another venue in the village is made which may take trade away from the village hall then the matter would affect the village hall and a reasonable person would believe that would affect your view of the public interest so those two tests are met.

You would not have an interest if the council was discussing early planning for an event, which may or may not be held in the village hall as there would be no direct financial impact at that time. When the plans crystallised then an interest would arise as a decision would be made which would have financial implications.

There will also be circumstances where you do not need to declare an interest even though the matter may be relevant to the wider aims of an organisation of which you are a member. For example, if you are a member of a charity such as the Royal Society for the Protection of Birds (RSPB), you do not need to declare an interest every time the council might discuss matters relating to habitats or conservation issues. Those issues may reflect the wider aims of RSPB, but they do not directly relate to or affect the organisation and your mere membership of the organisation has no bearing on the matter.

If you were in a position of control or general management in that body and the organisation was campaigning actively on the specific issue being discussed or you personally were campaigning actively on that specific issue the situation would be different. In those circumstances you may have an interest and there is a risk of predetermination. Where there is doubt you should always seek advice from the clerk.

As with DPIs you can be granted a dispensation (see below) and if the interest has not been registered or notified to the monitoring officer you should do so within 28 days of the meeting.

Non-Registerable Interests

(paragraphs 7, 8 and 9 of Annex B)

The third category of interests is Non-Registerable Interests (NRIs).

An NRI arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).

As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or well-being. The Code says you should not participate in the relevant business in two circumstances:

1. when a matter directly relates to that interest; or
2. when a matter affects that interest to a greater extent than it affects the majority of inhabitants and a reasonable member of the public would thereby believe that your view of the public interest would be affected

For example, under a) if your son has submitted a planning application the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.

For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner's home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.

Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare an NRI.

In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of residents.

As with DPIs you can be granted a dispensation (see below).

What is the difference between 'relates to' and 'affects'?

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

What does "affecting well-being" mean?

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your well-being on a temporary basis. Closure of a local amenity may have a more permanent impact on your well-being if you use it more than the majority of people in the area.

What are the definitions of relative or close associate? The Code does not attempt to define "relative" or "close associate", as all families vary. Some people may have very close extended families, but others will have more distant relations. You should consider the nature of your relationship with the person (e.g. whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor. It would be a person with whom you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently.

What if I am unaware of the interest?

You can only declare an interest in a matter if you are aware of the interest. For example, a sports club of which your father-in-law is a chair may have made an application to the council. You may not be aware that he is the chair, and you are not expected to have to ask about the social affairs of your relatives or acquaintances simply because you are a councillor. However, you would need to declare an interest as soon as you became aware.

A reasonable member of the public would expect you to know of certain interests of course, so it is, for example, reasonable that you would be expected to know your daughter's address or job but not necessarily any shareholdings she might have. While it is therefore your decision as to whether or not to declare an interest, you should always consider how it might seem to a reasonable person and if in doubt always seek advice from the clerk.

Do I always have to withdraw if I have an Other Registerable Interest or a NonRegisterable Interest to declare?

Where you have declared a DPI the Localism Act says you must always withdraw from participation unless you have a dispensation.

If the matter is an ORI or NRI you must always withdraw from participation where the matter directly relates to that interest unless you have a dispensation.

If it is something which affects the financial interest or well-being of that interest you are asked to declare it and the Code then asks you to apply a two-part test before considering whether to participate in any discussion and/or vote:

- Does the matter affect the interest more than it affects the majority of people in the area to which the business relates?

For example, if a major development affects the settlement where your sister lives and your sister would be no more affected than anybody else – for example, she lives at the other end of the settlement rather than next door to the development, the answer would be no. If the answer is yes, you then ask:

- Would a reasonable member of the public knowing all the facts believe that it would affect your judgment of the wider public interest?

This is similar to the test for bias (see guidance on predetermination and bias) and if the answer is yes to that question then you must not take part in the meeting.

Examples

You help to run a food bank and are considering a motion to investigate the causes of poverty. A reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are over 65 and are taking part in a discussion about provisions for older people. You would be more affected than the majority, but a reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are discussing closure of allotments where your brother has a plot. A reasonable member of the public would think that fact would affect your view of the wider public interest because of the direct effect on your brother.

What does 'withdraw from the meeting' mean?

When you withdraw from the meeting that means you must not be present in the room during the discussion or vote on the matter. If the public are allowed to speak at the meeting then you would be granted the same speaking rights as the public and would need to comply with the same rules – for example, giving notice in advance or abiding by time limits. However, unlike the public you would then withdraw once you had spoken.

This would be true at a committee meeting, for example, even if you are not a member of the committee but are simply attending as a member of the public. By staying in the room, even though you are not permitted to speak or vote, it is a long-held doctrine of case law that a councillor may still influence the decision or might gather information which would help in the furtherance of his or her interest. It is therefore in the public interest that a councillor, after having made any representations, should withdraw from the room, and explain why they are withdrawing.

These rules would apply to virtual meetings as they would to physical meetings. For example, after having spoken you should turn off your microphone and camera and may be moved to a 'virtual waiting room' while the item is discussed.

Dispensations

Wherever you have an interest the Code allows you to apply for a dispensation. The Localism Act sets out arrangements for applying for a dispensation where you have a DPI but is silent about dispensations for other types of interest as they are not statutory interests. A similar process should however be set out in your standing orders or Dispensation Policy for ORIs and NRIs.

A dispensation must be applied for in writing to the 'Proper Officer' (the clerk) in good time before the relevant meeting and will be considered according to the council's scheme of delegation for considering a dispensation. The circumstances whereby a dispensation may be granted are where -

- It is considered that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
- It is considered that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
- That the authority considers that the dispensation is in the interests of persons living in the authority's area.
- That the authority considers that it is otherwise appropriate to grant a dispensation.

What is a 'sensitive interest'?

There are circumstances set out in the Localism Act where you do not need to put an interest on the public register or declare the nature of an interest at a meeting although you would have to declare in general terms that you have an interest. These are so-called 'sensitive interests'.

An interest will be a sensitive interest if the two following conditions apply:

a) That you have an interest (whether or not a DPI); and
b) the nature of the interest is such that you and the principal authority's monitoring officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.

Where it is decided that an interest is a "sensitive interest" you must inform the monitoring officer of the interest so that a record is kept but it will be excluded from published versions of the register. The monitoring officer may state on the register that the councillor has an interest, the details of which are excluded under that particular section.

Where the sensitive interest crops up in a meeting the usual rules relating to declaration will apply except that you will only be required to disclose that you hold an interest in the matter under discussion but do not have to say what that interest is. The Localism Act sets out the scheme where the DPI is a sensitive interest. Your council's procedures should allow for similar arrangements for other registerable or declarable interests.

For example, if your sister has been subject to domestic violence such that the perpetrator has been served with a Domestic Violence Protection Order you would not be expected to disclose your sister's address to a meeting.

What do I do if I need advice?

If you are unsure as to whether you have an interest to declare you should always seek advice from the clerk.

The Golden Rule is be safe –seek advice if in doubt before you act.

Bias and Predetermination

Bias and predetermination are not explicitly mentioned in the Code of Conduct. The Code provisions on declarations of interest are about ensuring you do not take decisions where you or those close to you stand to lose or gain improperly (see guidance on declarations of interest)

There is however a separate concept in law dealing with bias and predetermination which exists to ensure that decisions are taken solely in the public interest rather than to further private interests.

Both the courts and legislation recognise that councillors are entitled, and indeed expected, to have and to have expressed their views on a subject to be decided upon by the council. In law, there is no pretence that such democratically accountable decisionmakers are intended to be independent and impartial as if they were judges or quasijudges.

Nonetheless, decisions of public authorities do involve consideration of circumstances where a decision-maker must not act in a way that goes to the appearance of having a closed mind and pre-determining a decision before they have all of the evidence before them and where they have to act fairly. Breaches of the rules of natural justice in these circumstances have and do continue to result in decisions of local authorities being successfully challenged in the courts. These issues are complex, and advice should be sought and given in the various situations that come up, which is why there are no direct paragraphs of the Code covering this, although it does overlap with the rules on declarations of interest.

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code, but councillors need to be clear that they are not biased or predetermined going into the decision-making process.

Otherwise the decision is at risk of being challenged on appeal or in the courts. To quote a leading judgment in this field "All councillors elected to serve on local councils have to be scrupulous in their duties, search their consciences and consider carefully the propriety of attending meetings and taking part in decisions which may give rise to an appearance of bias even though their actions are above reproach." [2]

[2] Kelton v Wiltshire Council [2015] EWHC 2853 (Admin)

The rules against bias say that there are three distinct elements.

The first seeks accuracy in public decision-making.

The second seeks the absence of prejudice or partiality on the part of you as the decisionmaker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal strong feelings they may have had in advance of making the decision.

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that justice should not only be done but should manifestly and undoubtedly be seen to be done.

To varying degrees, these “requirements” might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: “automatic” (or “presumed”) bias, “actual” bias, and “apparent” bias.

The rationale behind “automatic” or “presumed” bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased in fact. In these circumstances you should not participate in the discussion or vote on the issue. These are covered by the Code’s requirement to declare certain interests and withdraw from participation (see guidance on declaration of interests).

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the council yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

Predetermination

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

Predetermination at a meeting can be manifested in a number of ways. It is not just about what you might say, for example, but it may be shown by body language, tone of voice or overly-hostile lines of questioning for example.

You are therefore entitled to have a predisposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind and demonstrate that to the meeting by your behaviour, that you are able to take account of all of the evidence and make your decision on the day.

How can bias or predetermination arise?

The following are some of the potential situations in which predetermination or bias could arise.

Connection with someone affected by a decision

This sort of bias particularly concerns administrative decision-making, where the council must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

For example, a principal authority councillor also belongs to a local council that has complained about the conduct of an officer of the principal authority. As a result of the complaint the officer has been disciplined. The officer has appealed to a councillor panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and is not involved with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.

Improper involvement of someone with an interest in the outcome

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

For example, a principal authority receives an application to modify the Definitive Map of public rights of way. A panel of councillors are given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

Prior involvement

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal

from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.

If the councillor is merely seeking to lobby a public meeting at which the decision is taking place but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

For example, a council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: “speaking for myself I am inclined to go along with the barrister’s recommendation”. He later participates in the council’s decision to accept the barrister’s recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister’s report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

Another example is where a developer entered into negotiations to acquire some surplus council land for an incinerator. Planning permission for the incinerator had already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new councillors who have campaigned against the incinerator and a full debate, the council’s executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses. The council’s decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

What do I do if I need advice?

If you are unsure as to whether your views or any action you have previously taken may amount to predetermination you should always seek advice from the clerk The Golden Rule is be safe –seek advice if in doubt before you act.