

At: Gadeirydd ac Aelodau'r Pwyllgor
Safonau

Dyddiad: 14 Mai 2015

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Annwyl Aelod o'r Pwyllgor,

Fe'ch gwahoddir i fynychu cyfarfod y **PWYLLGOR SAFONAU, DYDD GWENER, 22 MAI 2015 am 10.00 am yn YSTAFELL BWYLLGORA 1A, NEUADD Y SIR, RHUTHUN LL15 1YN.**

Yn gywir iawn

G Williams
Pennaeth Gwasanaethau Cyfreithiol a Democraidaidd

AGENDA

RHAN 1: GWAHODDIR Y WASG A'R CYHOEDD I FYNYCHU'R RHAN HON O'R CYFARFOD

1 ETHOL IS-GADEIRYDD I'R PWYLLGOR SAFONAU

Penodi Is-gadeirydd i'r Pwyllgor Safonau.

2 YMDDIHEURIADAU

3 DATGANIADAU O FUDDIANT (Tudalennau 5 - 6)

Dylai'r Aelodau ddatgan unrhyw gysylltiad personol neu gysylltiad sy'n rhagfarnu mewn unrhyw fater a nodwyd i'w ystyried yn y cyfarfod hwn.

4 MATERION BRYD FEL Y'U CYTUNWYD GAN Y CADEIRYDD

Rhybudd o eitemau y dylid, ym marn y Cadeirydd, eu hystyried yn y cyfarfod fel materion brys yn unol ag Adran 100B (4) Deddf Llywodraeth Leol, 1972.

5 COFNODION Y CYFARFOD DIWETHAF (Tudalennau 7 - 12)

Derbyn cofnodion cyfarfod y Pwyllgor Safonau a gynhaliwyd ar 6 Mawrth 2015 (copi ynghlwm).

- 6 RHAGLEN GWAITH I'R DYFODOL** (Tudalennau 13 - 14)
Ystyried Rhaglen Gwaith i'r Dyfodol y Pwyllgor Safonau (copi ynghlwm).
- 7 ADRODDIAD BLYNYDDOL Y CADEIRYDD**
Ystyried adroddiad llafar gan y Dirprwy Swyddog Monitro gydag adborth gan y Cyngor Blynyddol ynghylch Adroddiad Blynyddol y Cadeirydd.
- 8 OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU – CANLLAWIAU DIWYGIEDIG Y COD YMDDYGIAD** (Tudalennau 15 - 108)
Ystyried adroddiad gan y Swyddog Monitro (copi ynghlwm) er mwyn galluogi i Aelodau'r Pwyllgor drafod a nodi cynnwys y dogfennau canllaw diwygiedig a chytuno ar y dull o ddsbarthu i aelodau etholedig.
- 9 DATGAN BUDDIANNAU A LLETYGARWCH** (Tudalennau 109 - 118)
Ystyried adroddiad gan y Rheolwr Gwasanaethau Democrataidd (copi ynghlwm) i'r Pwyllgor drafod y prosesau a'r canlyniadau sy'n cael eu cyflawni o ran cydymffurfio â rhwymedigaethau gorfodol ar gyfer datgan buddiannau, lletygarwch a rhoddion a gynigir i Aelodau a Swyddogion.
- 10 ADBORTH O'R HYFFORDDIANT COD YMDDYGIAD AR GYFER CLERCOD CYNGHORAU DINAS, TREF A CHYMUNED**
Ystyried adroddiad llafar gan y Swyddog Monitro, gan ddarparu adborth o'r hyfforddiant Cod Ymddygiad a gynhaliwyd ar 19 Mai 2015 yn Neuadd y Sir, Rhuthun.
- 11 HYFFORDDIANT AR GYFER CADEIRYDDION AC IS-GADEIRYDDION CYNGHORAU DINAS, TREF A CHYMUNED** (Tudalennau 119 - 122)
Ystyried adroddiad gan y Dirprwy Swyddog Monitro (copi ynghlwm) er mwyn rhoi adroddiad gwybodaeth i'r Aelodau, sy'n dangos manylion hyfforddiant arfaethedig i Gadeiryddion ac Is-Gadeiryddion.
- 12 PRESENOLDEB MEWN CYFARFODYDD**
Nodi presenoldeb aelodau'r Pwyllgor Safonau yng nghyfarfodydd Cyngorau Sir, Tref a Chymuned a derbyn eu hadroddiadau.
- 13 DYDDIAD Y CYFARFOD NESAF**
Cynhelir cyfarfod nesaf y Pwyllgor Safonau am 10.00am ar ddydd Gwener 18 Medi 2015 yn Ystafell Gynadleda 1a, Neuadd y Sir, Rhuthun.

RHAN 2: EITEMAU CYFRINACHOL

Argymhellir, yn unol ag Adran 100A (4) Deddf Llywodraeth Leol 1972, y dylid gwahardd y Wasg a'r Cyhoedd o'r cyfarfod yn ystod trafod y materion canlynol oherwydd y tebygolrwydd y caiff gwybodaeth eithriedig, fel y diffinnir ym Mharagraff "12 ac 13" Rhan 4 o Atodlen 12A y Ddeddf, ei datgelu.

14 COD YMDDYGIAD - RHAN 3 DEDDF LLYWODRAETH LEOL 2000

(Tudalennau 123 - 124)

Ystyried adroddiad cyfrinachol gan y Swyddog Monitro (copi ynghlwm) sy'n rhoi trosolwg o gwynion a gyflwynwyd yn erbyn aelodau i Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

AELODAETH

Aelodau Annibynnol:

Ian Trigger (Cadeirydd), Mrs Paula White, Mrs Julia Hughes a/ac Mrs Anne Mellor

Aelod Cyngor Tref/Cymuned:

Y Cynghorydd David E Jones

Cynghorwyr Sir:

Y Cynghorydd Bill Cowie

Y Cynghorydd Barry Mellor

COPIAU I'R:

Holl Gynghorwyr er gwybodaeth

Y Wasg a'r Llyfrgelloedd

Cynghorau Tref a Chymuned

Mae tudalen hwn yn fwriadol wag

DEDDF LLYWODRAETH LEOL 2000

Cod Ymddygiad Aelodau

DATGELU A CHOFRESTRU BUDDIANNAU

Rwyf i,
(enw)

*Aelod /Aelod cyfetholedig o
(*dileuer un)

Cyngor Sir Ddinbych

YN CADARNHAU fy mod wedi datgan buddiant ***personol / personol a sy'n rhagfarnu** nas datgelwyd eisoes yn ôl darpariaeth Rhan III cod ymddygiad y Cyngor Sir i Aelodau am y canlynol:-
(*dileuer un)

Dyddiad Datgelu:

Pwyllgor (nodwch):

Agenda eitem

Pwnc:

Natur y Buddiant:

(Gweler y nodyn isod)*

Llofnod

Dyddiad

Noder: Rhowch ddigon o fanylion os gwelwch yn dda, e.e. 'Fi yw perchennog y tir sy'n gyfagos i'r cais ar gyfer caniatâd cynllunio a wnaed gan Mr Jones', neu 'Mae fy ngŵr / ngwraig yn un o weithwyr y cwmni sydd wedi gwneud cais am gymorth ariannol'.

Mae tudalen hwn yn fwriadol wag

PWYLLGOR SAFONAU

Cofnodion cyfarfod o'r Pwyllgor Safonau a gynhaliwyd yn Ystafell Bwyllgora 1a, Neuadd y Sir, Rhuthun LL15 1YN, Dydd Gwener, 6 Mawrth 2015 am 10.00 am.

YN BRESENNOL

Aelodau Annibynnol, Mr Ian Trigger (Cadeirydd), y Cynghorydd David E. Jones, Mrs Paula White a'r Cynghorydd Sir Bill Cowie.

HEFYD YN BRESENNOL

Dirprwy Swyddog Monitro a Chyfreithiwr (LJ) a Gweinyddwr y Pwyllgorau (SLW)

Hefyd yn Bresennol - Clerc Cyngor Tref y Rhyl (GN)

1 YMDDIHEURIADAU

Derbyniwyd ymddiheuriadau am absenoldeb oddi wrth y Cynghorwr(wyr) Barry Mellor

Croesawodd y Cadeirydd bawb i'r cyfarfod a dywedodd fod y Parchedig Wayne Roberts wedi cyflwyno llythyr ymddiswyddo ffurfiol. Diolchodd Aelodau'r Pwyllgor Safonau i'r Parchedig Roberts am ei gyfraniad at y Pwyllgor yn ystod y tair blynedd ddiwethaf.

Eglurodd y Cadeirydd a'r Dirprwy Swyddog Monitro y byddai hysbyseb yn cael ei lunio i recriwtio dau aelod annibynnol newydd i'r Pwyllgor. Byddai Panel Dethol yn cael ei sefydlu ar gyfer y cyfweiliadau a byddai angen aelod annibynnol o'r cyhoedd i eistedd ar y Panel.

2 DATGAN CYSYLLTIAD

Ni ddatganwyd unrhyw gysylltiad.

Gofynnodd y Cynghorydd Bill Cowie am arweiniad gan y Dirprwy Swyddog Monitro ynghylch dosbarthu ffurflenni datgan cysylltiad ymhob cyfarfod. Cadarnhaodd y Dirprwy Swyddog Monitro bod hyn wedi ei wneud er mwyn atgoffa Cynghorwyr i lenwi'r ffurflenni. Mae'r ffurflenni na ddefnyddir yn cael eu casglu a'u hailddefnyddio.

Gofynnodd y Cynghorydd David Jones a oes modd anfon copi o'r ffurflen at glercod Cynghorau Dinas, Tref a Chymuned er mwyn sicrhau bod ffurflen datgan cysylltiad safonol yn cael ei defnyddio ar draws y sir. Cadarnhaodd y Dirprwy Swyddog Monitro y byddai copi o'r ffurflen yn cael ei anfon.

3 MATERION BRYN FEL Y'U CYTUNWYD GAN Y CADEIRYDD

Dim.

4 COFNODION Y CYFARFOD DIWETHAF

Cyflwynwyd cofnodion cyfarfod y Pwyllgor Safonau a gynhaliwyd ar 23 Ionawr 2015.

Nid oedd y Cynghorydd Barry Mellor wedi ymddiheuro gan ei fod ar ei wyliau pan gafodd wybod ei fod wedi ei benodi fel aelod newydd o'r Pwyllgor. Felly, dylid tynnu enw'r Cynghorydd Mellor dan yr ymddiheuriadau.

Materion yn codi:-

Roedd y Cynghorydd Bill Cowie wedi gofyn am restr wirio o'r holl Gyngorau Dinas, Tref a Chymuned er mwyn galluogi aelodau'r Pwyllgor Safonau i nodi eu dewis o ran pa gyfarfod i'w fynychu.

Cadarnhaodd y Dirprwy Swyddog Monitro y byddai'n cyfarfod â'r Rheolwr Cynnwys y Gymuned er mwyn iddo gadarnhau dyddiadau'r holl gyfarfodydd. Unwaith y bydd yr wybodaeth hon ar gael, bydd yn cael ei dosbarthu i bob aelod o'r Pwyllgor Safonau.

Cafwyd trafodaeth a chodwyd y pwyntiau canlynol:

- (i) Gofynnwyd am gopi o rifau ffôn a chyfeiriadau e-bost Clercod y Cyngorau Dinas, Tref a Chymuned i hwyluso cyfathrebu.
- (ii) Ychwanegu enw'r Cyngor Dinas, Tref neu Gymuned at enwau'r Cyngorwyr mewn cofnodion neu ohebiaeth er mwyn eu hadnabod.
- (iii) Anfon eglurhad at holl aelodau'r Pwyllgor Safonau ynghylch eu presenoldeb mewn cyfarfodydd pan fydd eitem Rhan II yn cael ei thrafod. Eglurodd y Dirprwy Swyddog Monitro y byddent yn bresennol fel aelod o'r Pwyllgor Safonau ac fel aelod o'r cyhoedd, felly ni ddylent fod yn bresennol ar gyfer eitemau Rhan II. Byddai'r mecanwaith anffurfiol yn ôl doethineb y Cyngor.
- (iv) Yn aros am ymateb gan y Swyddog Monitro ynghylch trosglwyddo barn y Pwyllgor Safonau i Ombwdsmon Gwasanaethau Cyhoeddus Cymru o ran cyflwyno prawf budd y cyhoedd.
- (v) Hyfforddiant Cod Ymddygiad ar gyfer Clercod Cyngorau Dinas, Tref a Chymuned rhwng 2.00 p.m. a 5.00 p.m. ar 19 Mai 2015 yn Neuadd y Sir, Rhuthun. Mae croeso i aelodau'r Pwyllgor Safonau hefyd fynychu. Mae nifer o glercod newydd a gobeithio y byddant yn mynychu. Mae'r hyfforddiant hefyd yn sesiwn loywi i'r rheiny sydd wedi bod yn glercod ers peth amser. Bydd adborth yn cael ei gyflwyno i'r Pwyllgor Safonau ar 22 Mai 2015.
- (vi) Mae hysbysebu cyfarfodydd Cyngorau Dinas, Tref a Chymuned yn ddiffygiol. Argymhellodd y Pwyllgor y dylid gosod hysbysebion ar y prif strydoedd wrth ymyl y manau cyfarfod er mwyn annog y cyhoedd i fynychu. Mae Clerc Cyngor Tref Rhuthun wedi e-bostio'r Dirprwy Swyddog Monitro yn gofyn am adborth ynghylch: hysbysebu cyfarfod a lleoliad.
- (vii) E-ddysgu. Cafodd y digwyddiad hyfforddi blaenorol a gynhaliwyd gan y Swyddog Monitro a'r Dirprwy Swyddog Monitro ei ffilmio yn y gobaith y

gellid ei ddefnyddio i ddarparu hyfforddiant yn y dyfodol. Yn anffodus, yn dilyn gwyllo'r ffilm, cytunwyd nad yw ansawdd y ffilm yn ddigonol at ddibenion hyfforddi.

- (vii) Mae'r Dirprwy Swyddog Monitro yn chwilio am hyfforddwr i ddarparu hyfforddiant ar gyfer Cadeiryddion ac Is-gadeiryddion. Bydd diweddariad yn y cyfarfod nesaf.

PENDERFYNWYD y dylid, yn amodol ar yr uchod, derbyn a chymeradwyo cofnodion y cyfarfod a gynhaliwyd ar 23 Ionawr 2015 fel cofnod cywir.

5 RHAGLEN GWAITH I'R DYFODOL

Cyflwynodd y Dirprwy Swyddog Monitro y Rhaglen Gwaith i'r Dyfodol er ystyriaeth y Pwyllgor Safonau.

Cafwyd trafodaeth a chytunwyd bod y canlynol yn cael ei ychwanegu at y Rhaglen Gwaith i'r Dyfodol:

- (i) 22 Mai 2015 - Adborth ar Adroddiad Blynyddol y Cadeirydd ar ôl cyfarfod y Cyngor ac ethol Is-gadeirydd ar gyfer y Pwyllgor Safonau.
- (ii) 18 Medi - Adborth Fforwm Safonau Gogledd Cymru ar 30 Mai 2015.

Dywedodd y Dirprwy Swyddog Monitro y bydd Cynhadledd Safonau yn cael ei chynnal yng Nghaerdydd ar 20 Hydref 2015. Bydd yr holl fanylion yn cael eu dosbarthu ar ôl eu derbyn.

PENDERFYNWYD bod y Pwyllgor Safonau yn cytuno â'r Rhaglen Gwaith i'r Dyfodol a'r ychwanegiadau.

6 ADRODDIAD BLYNYDDOL Y CADEIRYDD

Cyflwynodd y Dirprwy Swyddog Monitro Adroddiad Blynyddol y Cadeirydd (copi ynghlwm) er mwyn galluogi Aelodau'r Pwyllgor Safonau i gyfrannu at yr adroddiad cyn iddo gael ei gyflwyno i'r Cyngor Llawn. Yn y cyfarfod diwethaf roedd y Swyddog Monitro yn awyddus iawn i ystyried barn y Cadeirydd a'r Pwyllgor ar y cynnwys.

Cytunodd Aelodau'r Pwyllgor Safonau y dylid cyflwyno Adroddiad Blynyddol ar waith, canfyddiadau a sylwadau'r Pwyllgor i holl aelodau'r Cyngor fel rhan o ymgyrch y Pwyllgor i gynyddu safonau ymddygiad moesegol a chydymffurfio â'r Cod Ymddygiad.

Diolchodd y Cadeirydd a'r Pwyllgor i'r Dirprwy Swyddog Monitro am ei waith ardderchog ar yr adroddiad.

PENDERFYNWYD y byddai Aelodau yn:

- (a) Nodi cynnwys yr adroddiad.
- (b) Darparu sylwadau i'r Swyddog Monitro ar gynnwys yr adroddiad i sicrhau ei fod yn adlewyrchu barn y Pwyllgor yn gywir.
- (c) Argymhell y dylai'r Cadeirydd gyflwyno'r adroddiad i'r Cyngor Llawn.

7 CAIS AM ODDEFEB GAN AELODAU CYNGOR TREF Y RHYL

Cyflwynodd y Dirprwy Swyddog Monitro y Cais am Oddefeb gan aelodau Cyngor Tref y Rhyl (copi ynghlwm) er mwyn caniatáu i'r Pwyllgor ystyried y cais, penderfynu a ddylid caniatáu'r oddefeb ac ystyried yr amodau i'w rhoi ynghlwm wrth y caniatâd arbennig.

Roedd Clerc Cyngor Tref y Rhyl, Gareth Nicolls, yn bresennol.

Cafwyd cais gan Gyngor Tref y Rhyl am oddefeb ar gyfer aelodau etholedig y Cyngor Tref mewn perthynas â materion yn ymwneud â Phwyllgor y Rhyl yn ei Blodau.

Mae Cyngor Tref y Rhyl yn penodi un o'i aelodau etholedig i wasanaethu ar y Pwyllgor, fodd bynnag, mae mwyafrif o aelodau'r Cyngor Tref hefyd yn rhan o waith y sefydliad, naill ai trwy fod ar y Pwyllgor yn rhinwedd eu swyddi personol neu fel aelodau o'r sefydliad.

Dywedodd Clerc Cyngor Tref y Rhyl fod Pwyllgor y Rhyl yn ei Blodau yn ystyried newid enw a gofynnodd i hynny gael ei ystyried mewn perthynas â'r oddefeb.

Cafwyd trafodaeth fanwl a chytunodd yr aelodau i ganiatáu'r oddefeb gydag amodau.

Canmolwyd Clerc Cyngor Tref y Rhyl gan y Pwyllgor o ran y ffordd yr oedd wedi gwneud y cais am oddefeb.

Felly:

PENDERFYNWYD rhoi goddefeb i Aelodau Cyngor Tref y Rhyl yn unol â Rheoliad 2(a) a (d) Rheoliadau Pwyllgorau Safonau (Caniatáu Goddefebau) (Cymru) 2001:

- (i) mae'r Oddefeb yn berthnasol i faterion a ystyrir gan Gyngor Tref y Rhyl o ran Pwyllgor y Rhyl yn ei Blodau (neu beth bynnag fydd yr enw newydd);
- (ii) mae'n rhaid i'r Aelodau barhau i ddatgan cysylltiad personol yn y cyfarfodydd y caiff eitemau o'r fath eu trafod. Yna, efallai y byddant yn cael siarad a phleidleisio i'r graddau y caniateir iddynt wneud hynny gan yr Oddefeb hon;
- (iii) bydd yr Oddefeb yn berthnasol am 12 mis o ddyddiad y cyfarfod hwn o'r Pwyllgor Safonau (6 Mawrth 2015). Wedi hynny, bydd yn rhaid i Glerc Cyngor Tref y Rhyl wneud cais ysgrifenedig i'r Swyddog Monitro am estyniad i'r Oddefeb gan nodi gweithgareddau Pwyllgor y Rhyl yn ei Blodau (neu beth bynnag fydd yr enw newydd);
- (iv) ar ethol Aelod newydd, mae'n rhaid i Glerc Cyngor Tref y Rhyl roi gwybod i'r Swyddog Monitro yn ysgrifenedig er mwyn cymhwyso'r Oddefeb i'r Aelod newydd.

Ar y pwynt hwn (11.30 a.m.) cafwyd toriad.

Ailddechreuodd y cyfarfod am 11.40 a.m.

8 DARPARIAETH HYFFORDDIANT AR GYFER CYNGHORWYR A CHLERCOD Y CYNGHORAU DINAS, TREF A CHYMUNED

Cyflwynodd y Dirprwy Swyddog Monitro adroddiad llafar i'r Pwyllgor ynghylch darpariaeth hyfforddiant.

Bydd digwyddiad hyfforddi ar gyfer Clercod ac Is-Glercod Cyngorau Dinas, Tref a Chymuned yn cael ei drefnu. Bydd llythyr yn cael ei anfon at bob clerc yn gofyn iddynt ddewis y dyddiad a'r amser gorau iddynt hwy. Unwaith y bydd yr ymatebion wedi dod i law, bydd y digwyddiad yn cael ei archebu, un yn y Rhyl ac un yn Rhuthun, ar y dyddiad oedd fwyaf cyfleus i'r clercod.

Mynegodd y Cadeirydd ei ddiolchiadau a diolchiadau'r Pwyllgor i'r Swyddog Monitro a'r Dirprwy Swyddog Monitro am eu gwaith da o ran hyfforddiant.

***PENDERFYNWYD** nodi'r adroddiad llafar.*

9 PRESENOLDEB MEWN CYFARFODYDD

Dim adroddiadau.

Unrhyw Fusnes Arall

Ar y pwynt hwn, gofynnodd y Cadeirydd i'r aelodau a oedd ganddynt unrhyw fusnes arall.

Gofynnodd y Cynghorydd Bill Cowie, pan fo cyrsiau hyfforddiant yn cael eu cynnal gan swyddogion, a oes modd penodi Cynghorydd fel Cadeirydd i redeg y cyfarfod gan ganiatáu i'r hwylusydd ganolbwyntio ar y materion hyfforddi.

Cytunodd y Pwyllgor â'r cais hwn.

10 DYDDIAD Y CYFARFOD NESAF

Nododd yr Aelodau y bydd cyfarfod nesaf y Pwyllgor Safonau yn cael ei gynnal ddydd Gwener 22 Mai 2015 am 10.00 a.m. yn Ystafell Gynadledda 1a, Neuadd y Sir, Rhuthun.

Gwahardd y wasg a'r cyhoedd

***PENDERFYNWYD** dan ddarpariaethau Adran 100A Deddf Llywodraeth Leol 1972, gwahardd y Wasg a'r Cyhoedd o'r cyfarfod ar gyfer yr eitemau busnes canlynol ar y sail y byddai gwybodaeth eithriedig yn debygol o gael ei datgelu fel y'i diffinnir ym Mharagraffau 12 ac 13 Rhan 4 Atodlen 12A Ddeddf Llywodraeth Leol 1972.*

RHAN II

11 COD YMDDYGIAD – RHAN 3 DEDDF LLYWODRAETH LEOL

Cyflwynodd y Dirprwy Swyddog Monitro adroddiad Cod Ymddygiad - Rhan 3 Deddf Llywodraeth Leol 2000 (a ddosbarthwyd yn flaenorol) i ddarparu trosolwg i'r Aelodau o gwynion a gyflwynwyd i Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

PENDERFYNWYD bod y Pwyllgor Safonau yn derbyn ac yn nodi cynnwys yr adroddiad.

Diwedd y cyfarfod – 12 p.m.

RHAGLEN GWAITH I'R DYFODOL Y PWYLLGOR SAFONAU

DYDDIAD Y CYFARFOD	EITEMAU / MEYSYDD YR ADRODDIAD	AWDUR YR ADRODDIAD
18 Medi 2015	Eitem Sefydlog: Presenoldeb mewn Cyfarfodydd	Amh.
	Eitem Sefydlog Rhan 2: Trosolwg o Gwynion yn Sir Ddinbych	Gary Williams (Swyddog Monitro)
	Adborth o Fforwm Safonau Gogledd Cymru a gynhelir 30 Mai	Gary Williams (Swyddog Monitro)
4 Rhagfyr 2015	Eitem Sefydlog: Presenoldeb mewn Cyfarfodydd	Amh.
	Eitem Sefydlog Rhan 2: Trosolwg o Gwynion yn Sir Ddinbych	Gary Williams (Swyddog Monitro)
4 Mawrth 2016	Eitem Sefydlog: Presenoldeb mewn Cyfarfodydd	Amh.
	Eitem Sefydlog Rhan 2: Trosolwg o Gwynion yn Sir Ddinbych	Gary Williams (Swyddog Monitro)
24 Mehefin 2016	Eitem Sefydlog: Presenoldeb mewn Cyfarfodydd	Amh.
	Eitem Sefydlog Rhan 2: Trosolwg o Gwynion yn Sir Ddinbych	Gary Williams (Swyddog Monitro)
16 Medi 2016	Eitem Sefydlog: Presenoldeb mewn Cyfarfodydd	Amh.
	Eitem Sefydlog Rhan 2: Trosolwg o Gwynion yn Sir Ddinbych	Gary Williams (Swyddog Monitro)
2 Rhagfyr 2016	Eitem Sefydlog: Presenoldeb mewn Cyfarfodydd	Amh.
	Eitem Sefydlog Rhan 2: Trosolwg o Gwynion yn Sir Ddinbych	Gary Williams (Swyddog Monitro)

Mae tudalen hwn yn fwiadol wag

Adroddiad i'r: Pwyllgor Safonau

Dyddiad y Cyfarfod: 22 Mai 2015

Aelod/Swyddog Arweiniol: Gary Williams, Swyddog Monitro

Awdur yr Adroddiad: Gary Williams, Swyddog Monitro

Teitl: Ombwdsmon Gwasanaethau Cyhoeddus Cymru –
Canllawiau Diwygiedig y Cod Ymddygiad

1. Am beth y mae'r adroddiad yn sôn?

1.1 Mae'r adroddiad yn sôn am ganllawiau diwygiedig i Aelodau Etholedig mewn perthynas â'r Cod Ymddygiad, a gyflwynwyd gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru (yr Ombwdsmon).

2. Beth yw'r rheswm dros gyflwyno'r adroddiad hwn?

2.1 Rhoi gwybodaeth i'r Aelodau a gofyn am eu sylwadau ar y canllawiau diwygiedig.

3. Beth yw'r Argymhellion?

3.1 Bod yr Aelodau yn trafod a nodi cynnwys y dogfennau sy'n ymwneud â'r canllawiau diwygiedig ac yn cytuno ar ffordd o rannu'r wybodaeth i Aelodau Etholedig.

4. Manylion yr adroddiad.

4.1 Fel y bydd y Pwyllgor yn cofio, yng nghyfarfod mis Ionawr rhoddwyd ystyriaeth i bapur trafod a luniwyd gan yr Ombwdsmon ynglŷn â'i fwriad i gyflwyno ystyriaeth o fudd y cyhoedd yn ei brawf dau gam wrth ystyried a ddylid ymchwilio ai peidio i gwyn a wnaed yn erbyn Aelod Etholedig yn honni iddo/iddi dorri amodau'r Cod Ymddygiad.

4.2 Mae'r Ombwdsmon bellach wedi llunio canllawiau diwygiedig ar gyfer y Cod Ymddygiad sy'n cynnwys ffactorau budd y cyhoedd yn y prawf dau gam, yn ogystal â chyflwyno newidiadau eraill i'r canllawiau blaenorol. Mae copi o lythyr eglurhaol yr Ombwdsmon yn cyflwyno'r canllawiau diwygiedig wedi'i gynnwys yn Atodiad 1 i'r adroddiad hwn. Fel o'r blaen, mae'r Ombwdsmon wedi llunio dwy ddogfen ganllaw, un ar gyfer Aelodau Etholedig yr Awdurdodau Unedol, Awdurdodau Tân ac Achub a'r Parciau Cenedlaethol, ac mae copi wedi'i gynnwys yn Atodiad 2 i'r adroddiad hwn, ac un arall ar gyfer Cyngorwyr Dinas, Tref a Chymuned, sydd wedi'i gynnwys yn Atodiad 3.

4.3 Mae'r ffactorau budd y cyhoedd a gaiff eu hystyried gan yr Ombwdsmon fel rhan o'i brawf dau gam wedi'u nodi yn Adran 1 y Canllawiau Diwygiedig, sef:

- difrifoldeb y tor-amod

- a yw'r Aelod wedi mynd ati'n fwriadol i geisio cael buddiant personol iddo'i hun neu i rywun arall ar draul y cyhoedd
- a yw amgylchiadau'r tor-amod yn golygu bod aelod wedi camddefnyddio sefyllfa o ymddiriedaeth neu awdurdod ac wedi achosi niwed i unigolyn
- a oedd unrhyw ffurf o wahaniaethu yn erbyn tarddiad cenedlaethol neu ethnig, rhyw, anabledd, oed, crefydd neu gred, hunaniaeth o ran rhywedd neu gyfeiriadedd rhywiol y dioddefwr, wrth wraidd y tor-amod
- a oes tystiolaeth o ymddygiad tebyg blaenorol ar ran yr Aelod
- a oes angen ymchwilio neu gyfeirio at bwyllgor safonau neu Banel Dyfarnu Cymru er mwyn sicrhau y bydd y cyhoedd yn dal yn gallu ymddiried yn Aelodau Etholedig yng Nghymru
- a yw'r ymchwilio neu'r cyfeirio at Bwyllgor Safonau neu Banel Dyfarnu Cymru yn ymateb cymesur, hynny yw, a yw'n debygol y byddai'r tor-amod yn arwain at gosbi'r Aelod (byddaf yn ystyried canlyniadau achosion blaenorol a ystyriwyd gan Bwyllgorau Safonau ledled Cymru a Phanel Dyfarnu Cymru), ac a ellid ystyried bod defnyddio adnoddau i gynnal ymchwiliad neu wrandawriad gan Bwyllgor Safonau neu Banel Dyfarnu Cymru yn ormodol wrth bwysu a mesur hyn yn erbyn unrhyw gosb debygol.

4.4 Mae'r Canllawiau diwygiedig hefyd yn cynnwys cyngor newydd mewn perthynas â rhyddid mynegiant, gweler Adran 2 o dan y pennawd "Trin pobl eraill â pharch ac ystyriaeth".

4.5 Mae'r Canllawiau diwygiedig hefyd yn cynnwys mwy o gyngor am ddefnydd Aelodau o'r cyfryngau cymdeithasol, yn benodol yn yr adran sy'n ymwneud â phryd y mae'r Cod yn gymwys, ac yn atgoffa Aelodau fod Cymdeithas Llywodraeth Leol Cymru wedi llunio ei chanllawiau ei hun, sef "Cyfryngau Cymdeithasol: Canllaw i Gynghorwyr" sydd yn cynnwys cyngor defnyddiol ym marn yr Ombwdsmon.

4.6 Mae'r Canllawiau diwygiedig i Aelodau Etholedig yr Awdurdodau Unedol yn cynnwys siartiau llif defnyddiol ar ffurf atodiadau i'r Canllawiau gyda'r nod o gynorthwyo Aelodau i benderfynu a oes ganddynt fuddiant y dylid ei ddatgan ai peidio, ac os oes ganddynt, a yw hwnnw yn fuddiant personol neu'n fuddiant personol sydd hefyd yn fuddiant sy'n rhagfarnu.

4.7 Mae'r Canllawiau diwygiedig i Gynghorwyr Tref, Dinas a Chymuned yn cynnwys un siart llif mwy syml er mwyn cynorthwyo Aelodau Etholedig i benderfynu a oes ganddynt fuddiant y dylid ei ddatgan ai peidio, ac os oes ganddynt, a yw hwnnw yn fuddiant personol neu'n fuddiant personol sydd hefyd yn fuddiant sy'n rhagfarnu.

5. Sut y mae'r penderfyniad yn cyfrannu at y Blaenoriaethau Corfforaethol?

5.1 Nid yw'r adroddiad yn cael effaith uniongyrchol ar y blaenoriaethau corfforaethol.

6. Faint y bydd yn ei gostio a sut y bydd yn effeithio ar wasanaethau eraill?

- 6.1 Nid oes unrhyw gostau uniongyrchol yn gysylltiedig â'r adroddiad.
- 7. Beth yw prif ganlyniadau'r Asesiad o'r Effaith ar Gydraddoldeb a gynhaliwyd ynglŷn â'r penderfyniad? Dylid cynnwys templed yr Asesiad o'r Effaith ar Gydraddoldeb fel atodiad i'r adroddiad.**
- 7.1 Nid oes angen cynnal asesiad o'r effaith ar gydraddoldeb.
- 8. Pa ymgynghori a gafwyd gyda'r Pwyllgorau Archwilio ac eraill?**
- 8.1 Ni chafodd y mater hwn ei adrodd ac nis ymgynghorwyd ynglŷn ag ef yn unrhyw fan arall.
- 9. Datganiad y Prif Swyddog Cyllid**
- 9.1 Nid oes unrhyw oblygiadau o ran costau uniongyrchol yn deillio o'r adroddiad hwn.
- 10. Pa risgiau sydd ac a oes unrhyw beth y gallwn ei wneud i'w lleihau?**
- 10.1 Heb ganllawiau priodol gan yr Ombwdsmon, mae risg na fydd gan Aelodau ddealltwriaeth glir o'i ddehongliad o'r Cod Ymddygiad a'i ddull o ymdrin â chwynion.
- 11. Hawl i wneud y Penderfyniad**
- 11.1 Erthygl 9.2 o Gyfansoddiad y Cyngor.

Mae tudalen hwn yn fwriadol wag

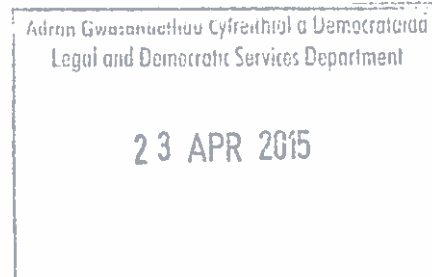
Our ref: NB/KS

 01656 641150

Date: 21 April 2015

 ask@ombudsman-wales.org.uk

Mr Gary Williams
Monitoring Officer
Denbighshire County Council
Council Offices
Wynnstay Road
Ruthin
LL15 1YN



Dear Mr Williams

Revised Guidance on the Code of Conduct

I am pleased to confirm that I have issued revised Guidance on the Code of Conduct for members. I am grateful to all who have taken part in the consultation process which has led to the production of this Guidance.

As you may already be aware, I have revised the two stage test that I use when deciding whether to investigate a complaint that the Code has been breached or to continue with an investigation to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales, to include consideration of any public interest factors that may apply to a case. This is to ensure that I continue to investigate serious complaints to maintain public confidence in standards of public life. Further information about the revised test and the public interest factors that I may apply is included in Section 1 of the revised Guidance. Other changes include further guidance on the use of social media and political expression and two flowcharts which have been designed to provide members with assistance and clarity on the issue of interests.

No hard copies of the Guidance will be produced. However, copies can be downloaded from my website at www.ombudsman-wales.org.uk I would appreciate it if you could bring this to the attention of your members and your authority's standards committee so that they can familiarise themselves with the changes that I have made. I hope that the Guidance will continue to be a useful resource to both you and your members when considering their obligations under the Code.

Yours sincerely



Nick Bennett
Ombudsman

Ein cyf: NB/KS

☎ 01656 641150

Dyddiad: 21 Ebrill 2015

✉ holwch@ombwdsmon-cymru.org.uk

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Annwyi Mr Williams

Cyfarwyddyd Diwygiedig ar y Cod Ymddygiad

Mae'n bleser gennyf gadarnhau fy mod wedi cyhoeddi Canllawiau diwygiedig ar y Cod Ymddygiad ar gyfer aelodau. Rwy'n ddiolchgar i bawb a gymerodd ran yn y broses ymgynghori sydd wedi arwain at gynhyrchu'r Canllawiau hyn.

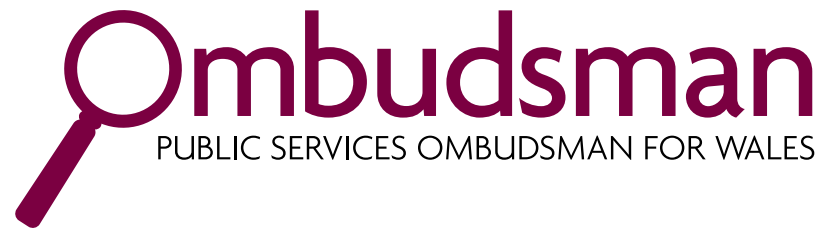
Fel y gwyddoch eisoes, o bosibl, yr wyf wedi diwygio'r prawf dau gam a ddefnyddiaf wrth benderfynu a ddylid ymchwilio i gŵyn fod y Cod wedi ei dorri neu i barhau ag ymchwiliad hyd at y cam o gyfeirio'r mater i bwyllgor safonau neu Banel Dyfarnu Cymru, i gynnwys ystyriaeth o unrhyw ffactorau budd cyhoeddus a allai fod yn berthnasol i'r achos. Mae hyn er mwyn sicrhau fy mod yn parhau i ymchwilio i gwynion difrifol er mwyn cynnal hyder y cyhoedd yn safonau bywyd cyhoeddus. Mae mwy o wybodaeth am y prawf diwygiedig a'r ffactorau budd cyhoeddus y gallaf eu defnyddio wedi'i chynnwys yn Adran 1 y Canllawiau diwygiedig. Mae newidiadau eraill yn cynnwys canllawiau pellach ar ddefnyddio cyfryngau cyhoeddus a mynegiant gwleidyddol a lluniwyd dau siart llif i ddarparu cymorth ac eglurder i aelodau ynghylch mater buddiannau.

Ni chynhyrchir copïau caled o'r Canllawiau. Fodd bynnag, gellir llwytho copïau oddi ar fy ngwefan yn www.ombudsman-wales.org.uk. Byddwn yn ddiolchgar pe gallech ddwyn hyn i sylw eich aelodau a phwyllgor safonau eich awdurdod fel y gallant ymgyswddo â'r newidiadau a wnaed gennyf. Rwy'n gobeithio y bydd y canllawiau'n parhau i fod yn adnodd defnyddiol i chi ac i'ch aelodau wrth ystyried eu rhwymedigaethau dan y Cod.

Yn gywir



Nick Bennett
Ombwdsmon



The Code of Conduct

for members of local authorities in Wales

Guidance from the
Public Services Ombudsman for Wales
for members of county and county borough councils,
fire and rescue authorities, and
national park authorities

Preface

This revised guide from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008. It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. As a member, you are required to sign up to it as part of your declaration of acceptance of office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate code of conduct applying to officers of local authorities in Wales.

This is the third version of this guidance and is my first as Public Services Ombudsman for Wales. This version, for the first time, explains the revised two stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes further guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests which some members find challenging. As before, it excludes guidance which only relates to town and community councillors. It contains examples drawn from recent cases considered by my office, standards committees across Wales and the Adjudication Panel for Wales.

The following pages aim to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction, while Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and Section 4 deal with general issues surrounding interests. You can obtain a copy of the Code by downloading it from your authority’s website or contacting your Monitoring Officer.

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

I have used examples throughout to help to bring the guidance to life. These examples are drawn from actual cases considered by my office and also include decisions reached by local standards committees and the Adjudication Panel for Wales. Some of these decisions may have been taken by my predecessor, but throughout, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases will be published quarterly in “The Code of Conduct Casebook” which is on my website at www.ombudsman-wales.org.uk

As a member you will be offered training on the Code whether by a Monitoring Officer or from a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards

expected of them in public life. I would also urge members to continue to avail themselves of local arrangements for dealing with member versus member complaints which have proved very effective as a means of resolving many of these cases.

Since taking up my office I have become increasingly concerned about the number of low level complaints that are being received. Whilst these complaints appear to have been generated by a small number of members, in these challenging times of public austerity, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

We should continue to work collaboratively to drive up standards in public life and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so we can build public confidence in our democratic institutions and promote good governance for the benefit of the people of all of our communities.



Nick Bennett
Public Services Ombudsman for Wales
March 2015

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

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

in Wales.

Acknowledgement

This guidance draws on guidance prepared and issued by Standards for England on the former English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. I would like to thank the legal services department of Ceredigion County Council for the use of its flowcharts on interests which are appended to this guidance.

Separate guidance is available for members of community councils.

First published April 2010.

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1. Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This was intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

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

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member.

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

It is my role as Public Services Ombudsman for Wales to independently investigate serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code I will use a two stage test. At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour on the part of the member
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel for Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committees across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

The process I use for investigating complaints is on my website at www.ombudsman-wales.org.uk

Local Resolution Process

Most local authorities across Wales have implemented local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints. Typically these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the Council's Monitoring Officer for consideration under this process. In my view such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint I may refer the matter to a standards committee or the Adjudication Panel for Wales. This will depend on the nature of and individual circumstances of the alleged breach.

Standards Committees

Standards committees are made up of independent lay members and of elected members of the authority. When I refer a case to a standards committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. In my view, hearings should be conducted in public unless there are valid reasons for not doing so to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke, or
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months.

A member may appeal against the determination of a standards committee to the Adjudication Panel for Wales.

The Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales its role is also to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals against the determination of a standards committee. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely

to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

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

The Principles

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

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

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument¹ and are detailed below.

1. Selflessness

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

2. Honesty

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

3. Integrity and Propriety

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

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

4. Duty to Uphold the Law

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

5. Stewardship

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

6. Objectivity in Decision-making

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

7. Equality and Respect

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

8. Openness

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

9. Accountability

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

10. Leadership

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

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

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

Deciding when the Code applies to you

See Paragraphs 2 and 3

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your authority. However, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your authority, some of the provisions of the Code apply to you at all times.

Consider conduct
in your public &
private life

When reaching a decision as to whether the Code applies to you at a particular time I will have regard to the particular circumstances and the nature of your conduct at that time.

Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions.

When does the Code apply?

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

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

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

If you refer to yourself as councillor, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1) (a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled “Social Media: A Guide for Councillors”. The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at www.wlga.gov.uk or by calling 029 2046 8600.

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

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

Example

Councillor B was nominated by a county borough council to serve as a board member of a stock transfer housing association. The Chief Executive of the housing association copied all board members into a confidential e-mail to the Chief Executive of the Council. Councillor B admitted sending the e-mail to the local press and said that he had done so because he felt that his duty as a councillor over-rode his duty as a board member of the housing association. Councillor B was found to have breached paragraph 3(a) of the Council’s Code by disclosing the e-mail in breach of the board’s own code of conduct. He was also found to have brought his office and authority into disrepute by making a misleading statement that “he recently had to withdraw” from the board of the housing association when he had been removed with immediate effect for the serious breach of confidentiality.

Example

An on-line poll about a person accused of murder which contained inappropriate language was set up using Councillor B’s council-provided laptop, internet access and his council e-mail address. Councillor B said he personally had not set up the poll. However, as the Council had provided him with the laptop he was responsible for it. He also made disparaging comments about housing benefit claimants on his Facebook page when responding to a request for advice in his councillor role. The Adjudication Panel found that Councillor B had acted in his official capacity because he had used his council-provided equipment and e-mail address.

Therefore, he could reasonably be regarded as representing himself as a councillor.

2. General obligations under the Code

If you consider that the Code applies to you at a particular time then you must consider what provisions may apply and your obligations under the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

Equality

See Paragraph 4(a)

You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.

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

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

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

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

You must also be mindful that at all times including when acting in your private capacity you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

Example

A member of a county council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room Councillor A said "good candidate, shame he's black." The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

Treating others with respect and consideration

See Paragraph 4(b)

Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable.

However it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others. A member's freedom of expression attracts enhanced protection when the comments are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

"Political" comments are not confined to those made within the council chamber and, for example, include comments members may generally make on their authority's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate and will take the view that the member needs a "thicker skin".

I may also decline to investigate a complaint where the member has raised "political" issues with officers. This would not however include threats to an officer's position or wellbeing. Recent case law has confirmed that council 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 unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, the officers who are in more senior positions, for example Chief Executives or Heads of Services, will also be expected to have a greater degree of robustness.

I expect members to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of member in the eyes of the public.

When considering such complaints I will take into account the specific circumstances of the case, whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

Political comments can attract Article 10 rights

Example

An appeal tribunal of the Adjudication Panel for Wales considered an appeal by Councillor X against the decision of the Council's Standards Committee. The Standards Committee found that Councillor X had failed to show respect and consideration to another member by prohibiting him from e-mailing the clerk and accessing the Council's website. Councillor X also made comments in an e-mail to the other members regarding his colleague's shower habits. In doing this the Standards Committee found that Councillor X had brought the Council into disrepute.

The Adjudication Panel found that Councillor X's comments were political in nature and attracted the enhanced protection of Article 10 of the European Convention on Human Rights. The Standards Committee's decision was overturned and the sanction rescinded. The decision of the Adjudication Panel can be found on the Panel's website <http://apw.wales.gov.uk> (Ref: APW/001/2014-015/AT).

Example

The Adjudication Panel upheld a finding of a standards committee of a failure to show respect and consideration for others by posting online comments about other members and the way in which the Council was run. The member sought judicial review of this decision. The Court found that whilst the comments which were posted were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were "Political Expression". The ruling said no account had been taken of the need for politicians to have "thicker skins". In view of the member's freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights. The Standards Committee's decision to censure the member was therefore set aside.

Example

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

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

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

Bullying and harassment

See Paragraph 4(c)

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

Consider your conduct from the other person's perspective

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health. This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

When considering allegations of bullying and harassment I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances but the relative seniority of the officer will be a factor in some cases. As outlined under paragraph 4(b) of the Code very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member the greater the likelihood that the officer will consider behaviour to constitute bullying.

Recently, the High Court found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Local Authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications, blogs, tweets, Facebook or other electronic

means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

Example

A county council member was disqualified from office for 2 years and 6 months by the Adjudication Panel for Wales following allegations of bullying, harassment, disrespect and bringing the office of member into disrepute. The alleged incidents occurred over a period of two years. During that time the member had made threatening comments to officers of both junior and senior grades. For example, comments such as, a number of managers of the Council had been dispensed with and there were more to go and “You won’t like the man I’ll become if I don’t get what I want...I don’t need to threaten you you’re an intelligent woman I know you’re listening to me”.

The member appealed the decision and the matter was referred to the High Court where all but three breaches were upheld. The decision can be found on the Panel’s website <http://apw.wales.gov.uk> (Ref: APW/005/2010-011/CT).

Compromising the impartiality of officers of the authority

See Paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your authority. You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

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

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

Example

The son and daughter-in-law of a member of a county borough council were neighbours of a family who were tenants of the Council. Complaints had been made about the family’s conduct. The member

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

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

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

The member was suspended from office for 12 months

Disclosing confidential information

See Paragraph 5(a)

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

- you have the consent of the person authorised to give it
- you are required by law to do so.

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on his website at www.ico.gov.uk or by calling 0303 123 1113. As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked confidential. On other occasions, this will not be the case, but you must not disclose them even if they are not marked. If you are in any doubt, always ask your Monitoring Officer.

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

When information is provided to members during the course of an investigation I expect this to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons I may consider this to be a breach of this paragraph of the Code. In addition members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

Example

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

Preventing access to information

See Paragraph 5(b)

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 0303 123 1113 or for specific queries, you should ask your Monitoring Officer.

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

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

Example

A leader of a county council refused to give the Council's Information Officer a letter he had written to the Wales Audit Office on behalf of the Council's Executive. As a result the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information

Officer. His refusal led to an adverse finding from the Information Commissioner's Officer. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters. By the time the case was considered by the Panel the member had resigned from office. He was disqualified from holding office for 12 months.

Disrepute

See Paragraph 6(1)(a)

You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time. As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your in both your public and private life might have an adverse impact on your office or your authority. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer as this may also constitute disrepute.

Any conduct unbecoming of a member can constitute disrepute

Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life. Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute. Inappropriate e-mails or social media posts might well bring the office of member into disrepute.

You must also conduct yourself in an appropriate manner with others within the confines of a council's building, regardless of whether your conduct is likely to be in the public domain.

Example

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

Reporting breaches of the Code

See Paragraph 6(1)(c)

If you reasonably believe that a breach of the Code has occurred, you must report it to me and to your Monitoring Officer. In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred,

your Monitoring Officer may advise you of the likely threshold I will set and suggest that the matter would be more appropriately dealt with through the authority's local resolution process. Nonetheless, the decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

Where a member has reported a fellow member to their Monitoring Officer under the authority's local resolution process, there is no need to report the matter to me as well.

In determining whether to investigate a complaint of a breach I will use the two stage test that I have outlined on pages 6 and 7 above. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or e-mails. If there are other individuals who have witnessed the alleged breach, you should let us know who they are. This latter point is especially important because if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

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

Vexatious complaints

See Paragraph 6(1)(d)

You must not make complaints against other members or staff members or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and as I have explained may also be a breach of the Code. You must report well-founded alleged breaches to me and to your Monitoring Officer, not to your local newspaper or radio station. The press will properly cover the business of any hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should therefore avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about, for example, when you may disagree with a member's approach to your authority's business or their role as member. Where

I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry I will consider this to be a serious matter and I may investigate. Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph but may also be contrary to your other obligations under the Code such as the requirement not to bring your position as councillor into disrepute or not to use your position for an improper purpose.

Example

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

Co-operating with investigations

See Paragraph 6(2)

You must co-operate with an investigation when it is being conducted by me or by your Monitoring Officer using our statutory powers. Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and your Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, you are expected to give priority to their investigations to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code.

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

If you intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

Using your position improperly

See Paragraph 7(a)

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. **This paragraph applies at all times** and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.

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

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraph 6(1)(a). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

Example

A member of a county council had requested that land in his ownership in Village A be included as suitable for development in the Council's Local Development Plan (LDP). When the Council was considering suitable settlement areas for inclusion in the LDP, officers recommended that land in the neighbouring village (Village B) be included in the draft plan instead. Despite having received very clear advice from the Council's Monitoring Officer on his prejudicial interest the member e-mailed the Council's planning policy officer and outlined a number of arguments which he claimed favoured the inclusion of his land in Village A as opposed to the land in Village B. At the relevant time the draft plan had been disclosed to members of the Council on a confidential basis and had not been disclosed publicly.

The Adjudication Panel found that by sending the e-mail the member had breached paragraph 7(a) of the Code by attempting to use his position improperly for his own advantage. At the hearing he sought to apportion blame on the Council's Monitoring Officer for failing to advise and train him properly on the Code when this clearly was not the case. His actions also brought his office and the Council into disrepute. The member was disqualified from holding office for 18 months for this and other breaches of the Code.

The authority's resources

See Paragraph 7(b)

You must only use or authorise the use of the resources of the authority in accordance with its requirements. **This paragraph also applies at all times.** Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

Using resources for proper purposes only

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

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

You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass e-mails as part of an election campaign, for example, would not be appropriate.

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

Example

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

Example

A member of a county borough council was found in breach of the Code for using his council-issued mobile phone excessively for private purposes. Whilst limited personal use was permitted under the Council's IT policy a bill in excess of £1000 was incurred in respect of private calls which the member had made. The Adjudication Panel suspended the member for 9 months for this and other breaches.

Reaching decisions objectively

See Paragraph 8(a)

When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and objectively. During the decision-making process you must act fairly and take proper account of the public interest.

In some decisions, such as those taken by planning committees, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as pre-determination. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (pre-disposition) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

Pre-determination on the other hand would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

Section 78 of the Local Government (Wales) Measure 2011 prohibits a member of an overview or scrutiny committee meeting from voting on a question at a meeting, if before the meeting, the member has been given a party whip relating to the question.

In order for me to investigate complaints of “whipping” of votes by political groups there must be written evidence or other corroborative evidence available of the whip. Suppositions based upon the voting patterns of particular groups will not be sufficient evidence of a whip.

Considering advice provided to you and giving reasons

See Paragraph 8(b)

You must have regard to all of the advice you receive from your authority’s officers, especially advice from the Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Legal Officer where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. This is a complex area and there are provisions within other legislation which underpin it, but in general, it goes well beyond a requirement to simply consider and reject advice if it is not welcome. I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so.

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

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

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people’s rights are affected but it is not confined to these.

As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.

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

Example

A member of a county council who chaired a council meeting refused to allow the Council’s Monitoring Officer to advise members during a debate about the Council’s “Annual Letter” from the Wales Audit Office. Also, when the Monitoring Officer did manage to intervene to express grave concerns about the way in which the proceedings were being conducted, he failed to have regard to the limited advice she was allowed to offer and simply said that he “noted her comments”.

The member was found to have breached paragraph 8(a)(iii) of the Code. The Adjudication Panel took into account the member’s full apology and expressions of remorse for his behaviour and indicated that had the member not already accepted his wrongdoing it would have imposed a greater sanction than the 4 months’ suspension it imposed.

Expenses

See Paragraph 9(a)

You need to follow the law and your authority’s requirements in claiming expenses and allowances. If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming, for example, for childcare.

Example

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

Gifts and hospitality

See Paragraph 9(b)

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

This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your authority. (See also the section on registering gifts and hospitality at page 44).

3. Personal and prejudicial interests

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

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

In my experience it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members.

The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Monitoring Officer for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached two flowcharts at Appendix 1 and 2 which Ceredigion County Council's Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.

Guidance on registering interests is at Section 4.

Personal Interests

See Paragraph 10

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

Listed below are some questions that you should ask when deciding if you have an interest.

Do you have a link or close connection to the item to be considered?

Do I have a personal interest?

You have a personal interest in any business of your authority, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area
5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in as described in 4
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
7. any land let by your authority to a firm in which you are a partner, paid director or a body as set out in 4
8. any body to which you have been elected, appointed or nominated by your authority
9. any:
 - public authority or body exercising functions of a public nature
 - company, industrial and provident society, charity or body directed to charitable purposes
 - body whose main role is influencing public opinion or policy
 - trade union or professional association
 - private club, society or association operating in your authority's area in which you have membership or are in a position of general control or management
10. any land in your authority's area which you have a license to occupy for at least 28 days.

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

Ward and electoral division issues – including Paragraph 10(2)(b)

If **a member of the public** could reasonably conclude that when you are taking a decision on behalf of the authority as a whole you are more influenced by issues in your ward or electoral division than by the interests of the authority as a whole, for example, if the authority needs to make a provision but you do not think it should be in your ward or electoral division, then you would have a personal interest.

This paragraph has given rise to great interpretative difficulties. The crux of the problem is that a strict interpretation of the paragraph, as worded, could well preclude members from participating in any decision affecting their ward - whereas the underlying policy intention had been to limit the scope of this provision to decisions made by individual councillors in the exercise of executive functions.

I do not believe that it would be in the public interest, or in the interests of local democracy, to adopt a literal interpretation as a matter of course. Therefore as a general rule, in exercising my discretion, the decision as to whether to investigate will be based on the assumption that the paragraph is actually directed at individual members making decisions in the exercise of executive functions and decisions such as those made at planning or licensing committees.

Section 25 of the Localism Act 2011 outlines circumstances when members should not be regarded as having a closed mind when taking decisions. I will continue to review this in light of any future decisions and case law on the effect of this provision.

Example

The Adjudication Panel considered a case concerning this provision of the Code. The member had declared his opposition to a controversial planning application in his election manifesto pledging to “work tirelessly on issues of concern” and to “oppose the current development proposal”. Having been elected the member voted against the first planning application which the Council considered when the application was refused. He was subsequently quoted in the local and national press defending his decision to oppose the development. The Adjudication Panel found that the member had acted in such a way that a member of the public might reasonably perceive a conflict between his role as a local councillor and his role in taking a decision on behalf of his authority. It suspended the member from the planning committee for a period of 3 months.

Matters affecting your well being or financial position

If a decision might be seen as affecting your well being or financial position or the well being or financial position of any person who lives with you or with whom you have a close personal association to a greater extent than other people in your ward or, for members of authorities which do not have wards (for example, national parks) in your authority’s area, you have a personal interest. Examples of decisions of this kind include obvious issues like contracts being awarded to your partner’s company but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

What is “a body exercising functions of a public nature”?

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

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function, for example, a care home with residents supported by social services?
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority, for example, a private company collecting refuse for the authority?

- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

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

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

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

Who is a close personal associate?

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

Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

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

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

If you are a member of an authority that does not have wards or electoral divisions, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you or one or more of your close personal associates, more than it would affect other people in your authority’s area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority’s area.

“Twin hatted” members

If you are a member of both a community council and a county council you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning

application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraphs 8(a) and 10(2)(b) of the Code is also relevant here.

Obviously, if the application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “What to do when you have a prejudicial interest” below.

Example

Councillor F participated in a meeting which was considering whether to approve the complainant’s nomination for the post of school governor; Councillor F’s husband had also applied for the post. Not only did the Adjudication Panel find that she should have declared a personal interest in the item of business by virtue of her close personal association with her husband, it also took the view that as there had been a history of animosity directed towards the member by the complainant which had been reported publicly, she also had a personal interest by virtue of her close personal association with the complainant.

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

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

What to do when you have a personal interest

See Paragraph 11

Once disclosed you can stay & participate if your interest is not prejudicial

If you decide that you have a personal interest then you must take the following action before the matter is discussed or as soon as it becomes apparent to you, except in limited circumstances:

- declare that you have a personal interest, and the nature of that interest
 - at meetings
 - when making written representations (including e-mails, faxes etc.)
 - when making oral representations, even if your interest is on the register of interests.
- confirm your interest by e-mail or in writing to the officer concerned and to the Monitoring Officer within 14 days
- consider whether you have a prejudicial interest (see below).

If you are making representations in writing to another member or an officer, you must include details of any personal interests you have. Similarly, if you are speaking with an officer or member in person, by phone or video conference you should tell them about any personal interest you have before making representations or when the interest becomes apparent. The Ombudsman would generally expect officers to make a record of any conversation in which a member has declared an interest and attach it to the appropriate file.

If you are making a decision as part of an executive or board, you must make sure that the written record of that decision (for example, minutes of a cabinet meeting) includes details of your interest. If you have disclosed an interest at a meeting which has not previously been recorded, you must give it in writing to your authority in line with the arrangements set out by your Monitoring Officer. Normally, this will mean before, or immediately after the meeting concerned or as soon as possible thereafter. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

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

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

Prejudicial Interests

See Paragraph 12

Do not be swayed by what you think - consider what a member of the public would reasonably think

Do I have a prejudicial interest?

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

- the matter does not fall within one of the exempt categories of business (see below), or
- the matter relates to a licensing or regulatory matter (see paragraph 12(3)), and
a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

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

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

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

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

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

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

You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (for example, your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or electoral division affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application.

It does not matter whether it actually would or not.

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

Does the matter fall within one of the exemptions?

See Paragraph 12(2)

A member will not have a prejudicial interest if the business falls within one of a number of exemptions which are set out below.

The business relates to:

- another relevant authority of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school
- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school your child attends
- decisions about statutory sick pay if you receive or are entitled to receive it from your authority
- an allowance or payment for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

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

If one of the exemptions applies you are **not** regarded as having a prejudicial interest. You still must disclose your personal interest **but you are allowed to participate in the item under discussion.**

Example

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

Example

A standards committee determined that the circumstances in which a member's membership of a local organisation had ended resulting in an acrimonious and ongoing dispute between her and the organisation (including solicitors' letters for the recovery of a debt) constituted a close personal association. It found that the nature of this association meant that the member had a prejudicial interest and that she had failed to declare this and withdraw from numerous meetings when a financial donation to the organisation had been discussed.

Overview and Scrutiny Committees

See Paragraph 13

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

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

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

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

What to do when you have a prejudicial interest

See Paragraph 14

If you consider that you have a prejudicial interest in your authority's business you must take certain action.

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

Key point:

If you have a prejudicial interest in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room (or any other venue in which the meeting is being held including, for example, the location of a site meeting).

This is unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose. However, you must immediately leave the room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot remain in the public gallery to observe the vote on the matter.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest**. This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that as well as leaving meetings where the item is discussed, you should also not write or make any oral representations about the matter.

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

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

If I do not have a statutory right, will I be allowed to speak to the meeting?

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

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

You must declare your interest and withdraw from the room

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

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

What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision making process.

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

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

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

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

If you are asked to attend by the committee exercising its statutory powers, then you may attend and participate in the meeting.

Executive or cabinet roles

Please note: this section will not apply to fire and rescue authorities or national park authorities, unless in the latter case there are executive arrangements in place.

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

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

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

Dispensations

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

You can apply in writing to your authority's Standards Committee for a dispensation to speak and/or vote on a matter on one or more of the following grounds:

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

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

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

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

4. Registration of Interests

Key points:

All members of authorities have to provide a record of their interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any change to your register of interests, of any interests which fall within the categories set out in the Code, outlined below.

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

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

As previously mentioned, unless you are a community councillor, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any change to your register of interests, of any interests which fall within the categories set out in the Code. These categories include:

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

- your membership or position of control or management in:
 - any other bodies to which you were elected, appointed or nominated by the authority
 - any bodies **exercising functions of a public nature** (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union
 - any private club, society or association operating within your authority's area.

Sensitive information

Key points:

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

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

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

Gifts and hospitality

Key points:

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

You must register the gift or hospitality and its source within 28 days of receiving it. Like other interests in your register of interests, you may have a **personal interest** in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person and then decide whether that interest is also a **prejudicial interest**. It is also good practice to provide a note of any offers of gifts which you have declined.

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

You should ask yourself, would I have been given this if I was not on the Council? If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.

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

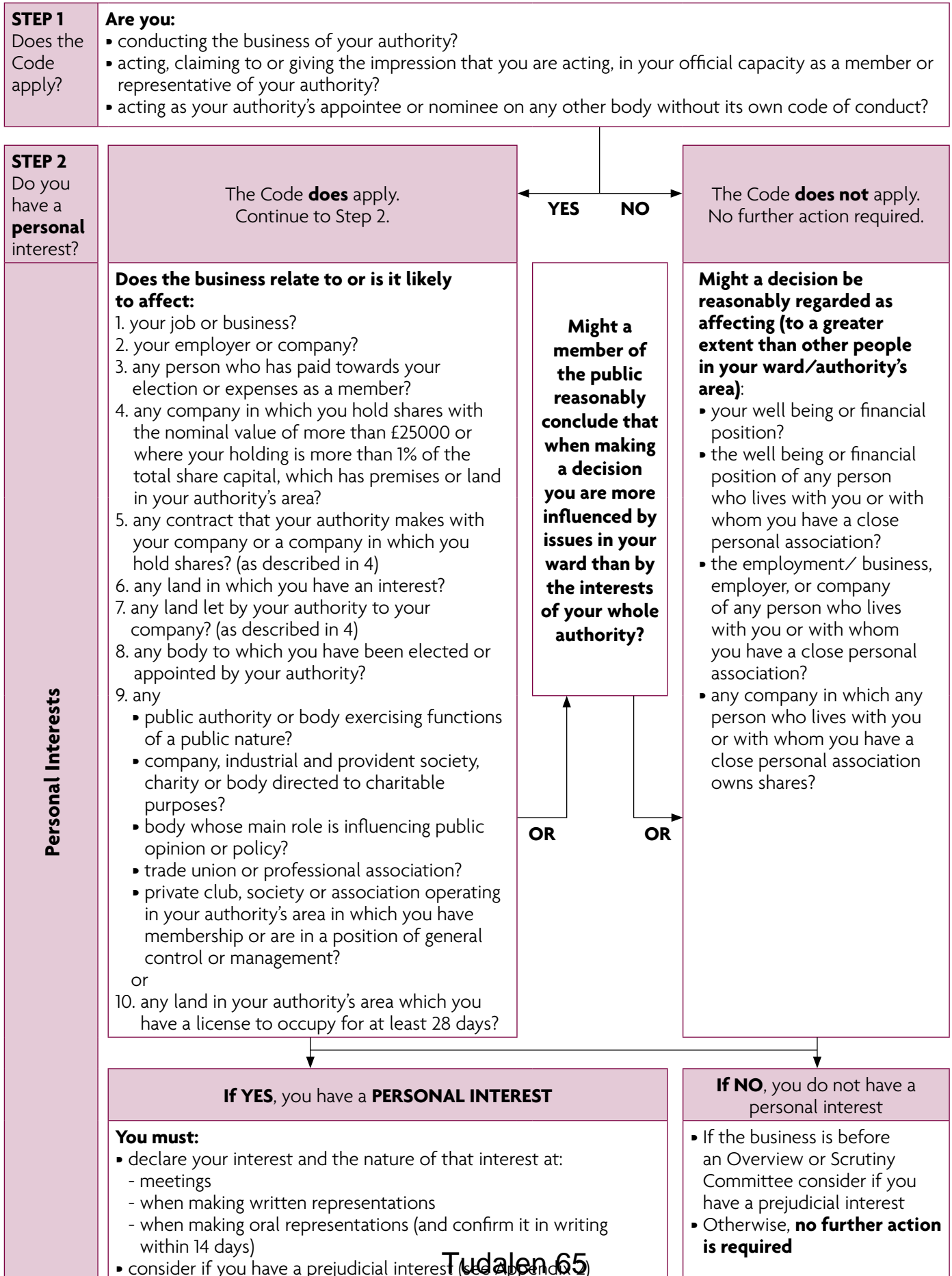
What if I do not know the value of a gift or hospitality?

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.

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

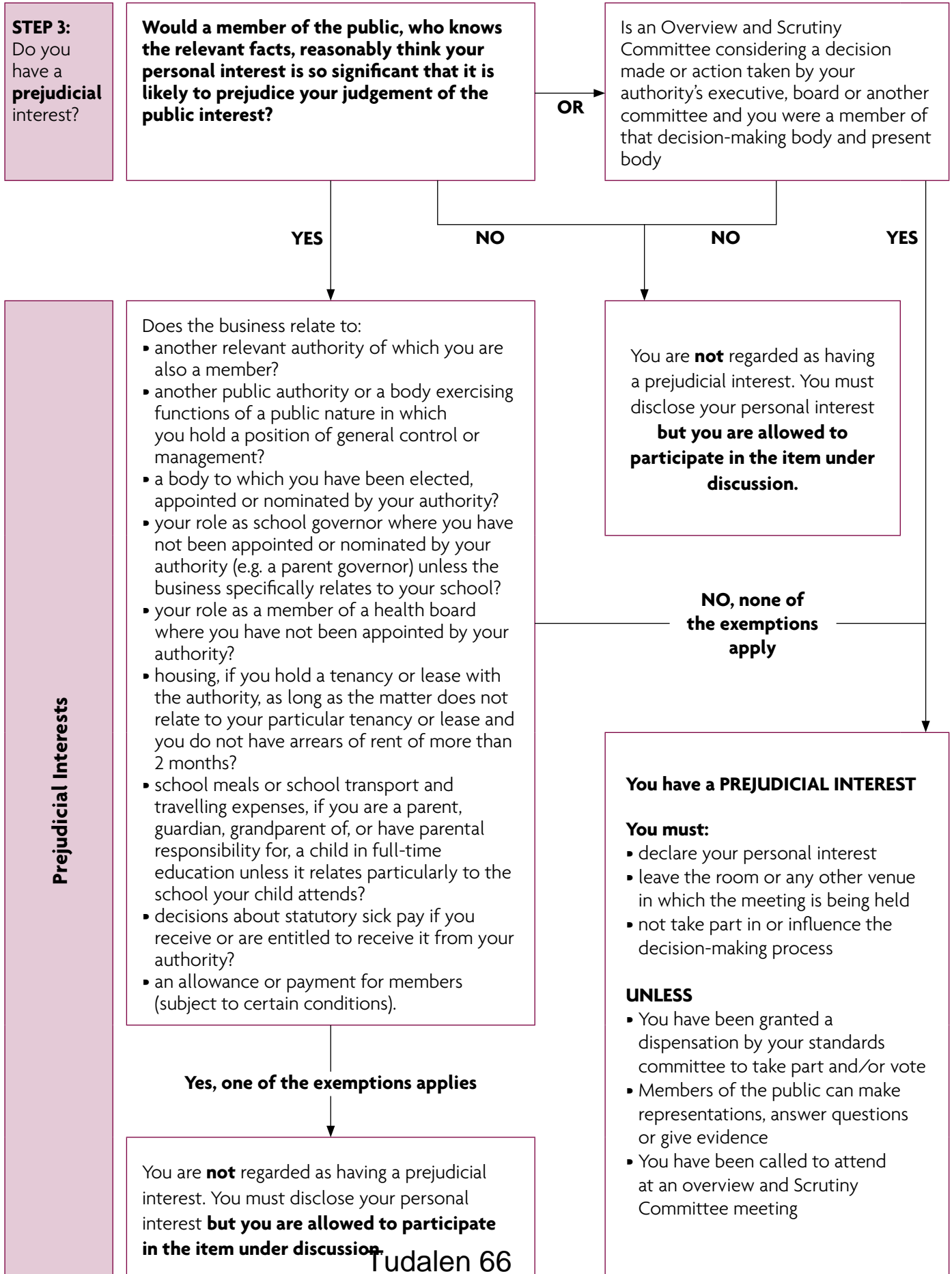
Personal Interests

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



Prejudicial Interests

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



Prejudicial Interests

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Mae tudalen hwn yn fwriadol wag



The Code of Conduct

for members of local authorities in Wales

Guidance from the
Public Services Ombudsman for Wales
for members of community councils

Preface

This revised guide from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008. It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales. As a member, you are required to sign up to it as part of your declaration of acceptance of office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate code of conduct applying to officers of local authorities in Wales.

This is a separate version of my first guidance as Public Services Ombudsman for Wales aimed at community and town councillors (referred to throughout this guidance as community councillors). The guidance differs in many parts from my guidance to county councillors as it recognises the different role that community councillors undertake.

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

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

I have used examples throughout the report to help to bring the guidance to life. These examples are drawn from actual cases considered by my office and also include decisions reached by local standards committees and the Adjudication Panel for Wales. Some of these decisions may have been taken by my predecessor, but throughout, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases will be published quarterly in “The Code of Conduct Casebook” which is on my website at www.ombudsman-wales.org.uk

As a member you will be offered training on the Code whether by your Clerk, a Monitoring Officer or from a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements that may be in place for dealing with complaints about their fellow members.

Since taking up my office I have become increasingly concerned about the number of low level complaints that are being received. Whilst these complaints appear to have been generated by a small number of members, in these challenging times of public austerity, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

We should continue to work collaboratively to drive up standards and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so we can build public confidence in our democratic institutions and promote good governance for the benefit of the people of all of our communities.



Nick Bennett
Public Services Ombudsman for Wales
March 2015

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

Separate guidance is available for elected, co-opted and appointed members of county councils, fire and rescue authorities and national park authorities in Wales.

Acknowledgement

This guidance draws on the guidance prepared and issued by Standards for England on the former English Code of Conduct. It has been extended and amended to refer to the Welsh Code and to the Welsh context. I would like to thank the legal services department of Rhondda Cynon Taf County Borough Council for the use of its flowchart on interests.

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1. Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This was intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils are required to assist members and co-opted members of town and community councils in their area to observe the Code, and to arrange for advice and training to be provided. I strongly recommend that all members should attend training and take advice where it is offered.

Whilst community councillors do not act on decision-making bodies such as planning committees you will be called upon to take decisions on the allocation of funding from your precept and to offer guidance, drawing on your valuable local knowledge, to the County Council about the impact of planning applications. It is imperative therefore, that you are fully aware of the Code and its implications for your decision-making and indeed, whether you should be involved in making a decision. In light of this I recommend training on the Code for all councillors as early in their term of office as possible.

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately, as a member, you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or contrary to advice simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

It is my role as Public Services Ombudsman for Wales to investigate complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code I will use a two stage test. At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities.

If that evidential stage is met, at the second stage I will consider whether an investigation or a referral to a standards committees or the Adjudication Panel for Wales is required in the public

interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour on the part of the member
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

The process I use for investigating complaints is on my website at www.ombudsman-wales.org.uk In this guidance I have tried, where possible, to use examples of cases which have been referred to me and which are relevant to community councils. Where this has not been possible I have given examples of theoretical scenarios that indicate how the Code may be breached while you are undertaking your role.

Local Resolution Process

Most local authorities across Wales have implemented local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints. I am supportive of this extending to cover community councils. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous **Tudalen 75** complaints against other members under paragraph

6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am likely to refer the matter back to the Council's Monitoring Officer for consideration under this process. In my view such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint I may refer the matter to a standards committee or the Adjudication Panel for Wales. This will depend on the nature of and individual circumstances of the alleged breach.

Standards Committees

Standards committees are made up of independent lay members and of elected members of the authority. When I refer a case to a standards committee its role is to decide whether a member has breached the Code and a sanction should be imposed. In my view, hearings should be conducted in public unless there are valid reasons for not doing so to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant council's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke, or
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months.

A member may appeal against the determination of a standards committee to the Adjudication Panel for Wales.

The Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales its role is also to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals against the determination of a standards committee. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

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

The Role of the Clerk

The Clerk is employed by your Council and undertakes a number of tasks including providing administrative support to the Council, advising on the development of policies and procedures and advising the Council on implementing and using its procedures. The Clerk acts in a supporting role and is the person you should turn to in the first instance if you need any advice.

The Clerk has a complex role and will be able to advise councillors on relevant legislation, including matters relating to the Code and on the Council's standing orders. The Clerk will work closely with the Chairman to ensure that appropriate procedures are followed at meetings and that all necessary information is available to councillors so that they may make informed decisions. Clerks may approach their relevant county council's Monitoring Officer for advice (see below).

The Clerk is an employee of the Council and is not required to abide by the Code. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of the Clerk; this is a matter for the Council as the Clerk's employer.

The Role of the Monitoring Officer

The Monitoring Officer is an officer employed by the County Council. Among many other things they advise and assist county councillors. Monitoring Officers may offer some training to community councils.

The Monitoring Officer has a significant role in the local resolution process outlined above and they will also work closely in advising the Standards Committee. You should always ask your Clerk in the first instance for any guidance or information. The Monitoring Officer may be able to provide information if your Clerk is unavailable.

The Principles

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

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

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument¹ and are detailed below.

1. Selflessness

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

2. Honesty

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

3. Integrity and Propriety

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

4. Duty to Uphold the Law

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

5. Stewardship

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

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

6. Objectivity in Decision-making

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

7. Equality and Respect

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

8. Openness

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

9. Accountability

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

10. Leadership

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

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

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

Deciding when the Code applies to you

See Paragraphs 2 and 3

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your Council. However, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the Code apply to you at all times.

Consider conduct
in your public &
private life

When reaching a decision as to whether the Code applies to you at a particular time I will have regard to the particular circumstances and the nature of your conduct at that time.

Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions.

When does the Code apply?

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

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

If you are acting as a representative of your Council on another body, for example on an event committee, which does not have a code of conduct relating to its members, you must comply with your Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.

If you refer to yourself as councillor, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled “Social Media: A Guide for Councillors”. The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at www.wlga.gov.uk or by calling 029 2046 8600.

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

Example

Councillor A made remarks about Councillor B at a committee meeting organising a waterfront parade. The parade was being arranged by a group of volunteers which had asked the Community Council to provide representatives to help it remain aware of community issues when making the arrangements. I was satisfied that Councillor A was acting in his capacity as a councillor at the Committee meeting, as his role on the Committee was as the Council’s representative and were it not for this fact he would not have been present at the meeting. However, in this case I was satisfied that the comments made by Councillor A were not sufficiently serious that, if proven, it would lead to a sanction being imposed on the accused member by a standards committee. Therefore I did not investigate this complaint.

Example

Conversely, a complaint was received that Councillor J was intoxicated and behaving inappropriately at a street party. It was established that Councillor J did not have to undertake any action on behalf of the Council at the party. Therefore, in my view, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way the Code did not apply (except for paragraph 6(1)(a)). Whilst her behaviour may have been considered inappropriate by some it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute so paragraph 6(1)(a) did not apply. I did not investigate this complaint.

2. General obligations under the Code

If you consider that the Code applies to you at a particular time then you must consider what provisions may apply and your obligations under the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

Equality

See Paragraph 4(a)

You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.

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

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

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your Council may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your Council's fulfilment of its positive duties under equality laws. 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.

You must also be mindful that at all times including when acting in your private capacity you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

Example

A member of a county council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room Councillor A said "good candidate, shame he's black". The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

Treating others with respect and consideration

See Paragraph 4(b)

You must show respect and consideration for others.

Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others. A member's freedom of expression attracts enhanced protection when the comments are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

"Political" comments are not confined to those made within council meetings and, for example, include comments members may generally make on their Council's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate complaints made in this context and councillors need a "thicker skin".

I may also decline to investigate a complaint where the member has raised "political" issues with officers, for example, the Clerk to a council. This would not however include threats to an officer's position or wellbeing. Recent case law has confirmed that council 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 unwarranted comments that disable them from carrying out their duties or undermine public confidence in the administration. That said, the officers who are in more senior positions will also be expected to have a greater degree of robustness.

I expect members to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of member in the eyes of the public.

When considering such complaints I will take into account the specific circumstances of the case, whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

Political comments can attract Article 10 rights

Example

An appeal tribunal of the Adjudication Panel for Wales considered an appeal by Councillor X against the decision of the Council's Standards Committee. The Standards Committee found that Councillor X had failed to show respect and consideration to another member by prohibiting him from e-mailing the clerk and accessing the Council's website. Councillor X also made comments in an e-mail to the other members regarding his colleague's shower habits. In doing this the Standards Committee found that Councillor X had brought the Council into disrepute.

The Adjudication Panel found that Councillor X's comments were political in nature and attracted the enhanced protection of Article 10 of the European Convention on Human Rights. The Standards Committee's decision was overturned and the sanction rescinded. The decision of the Adjudication Panel can be found on the Panel's website <http://apw.wales.gov.uk> (Ref: APW/001/2014-015/AT).

Example

The Adjudication Panel upheld a finding of a standards committee about a councillor who was accused of failing to show respect and consideration for others by posting online comments about other councillors and the way in which the Council was run. The member sought judicial review of this decision. The Court found that whilst the comments which were posted were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the councillors, the comments were "Political Expression". The ruling said no account had been taken of the need for politicians to have "thicker skins". In view of the member's freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights. The Standards Committee's decision to censure the member was therefore set aside.

Example

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

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

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

Bullying and harassment

See Paragraph 4(c)

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

Consider your conduct from the other person's perspective

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

When considering allegations of bullying and harassment I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

Example

Community Councillor P disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. Councillor P used disrespectful and abusive language and behaved in a bullying and intimidating manner towards Council Civil Enforcement Officers on four occasions. He also sought to use his position as a councillor improperly in relation to a parking offence. The Standards Committee found that Councillor P had breached paragraph 4(c) of the Code as he had pursued a course of conduct of threatening behaviour towards the County Council employees. The Standards Committee also established that Councillor P breached paragraphs 4(b), 7(a) and 6(1)(a) of the Code. He was suspended from acting as a councillor for 12 months.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances but the relative seniority of the officer will be a factor in some cases. As outlined under paragraph 4(b) of the Code very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member the greater the likelihood that the officer will consider behaviour to constitute bullying.

Recently, the High Court found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Local Authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

Example

A county council member was disqualified from office for 2 years and 6 months by the Adjudication Panel for Wales following allegations of bullying, harassment, disrespect and bringing the office of member into disrepute. The alleged incidents occurred over a period of two years. During that time the member had made threatening comments to officers of both junior and senior grades. For example, comments such as, a number of managers of the Council had been dispensed with and there were more to go and “You won’t like the man I’ll become if I don’t get what I want... I don’t need to threaten you you’re an intelligent woman I know you’re listening to me”.

The member appealed the decision and the matter was referred to the High Court where all but three breaches were upheld. The decision can be found on the Panel’s website <http://apw.wales.gov.uk> (Ref: APW/005/2010-011/CT).

Compromising the impartiality of officers of the authority

See Paragraph 4(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council. You should not approach anyone who works for, or on behalf of, the Council with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code.

Hypothetical Scenario

The Clerk is responsible for allocating allotments from a waiting list, the allotments are very popular and vacancies very rarely arise. The Clerk advised the Council that an allotment had become vacant and that they would consult the list and allocate the allotment to the person who had been waiting the longest in accordance with the Council's allotment allocation procedure. Councillor D's father had been waiting for an allotment for almost seven years. Councillor D approached the Clerk after the meeting and asked to see the list. He noted that one person was ahead of his father by only one month. Councillor D asked the Clerk to give the vacant allotment to his father, he said that as so much time had elapsed since his father and the other person had applied, the other person was unlikely to question who was first and in any event it would not be difficult to retype the list. Councillor D suggested that in return for this favour he would encourage the Council to look favourably on the charity suggested by the Clerk when it came time to decide where to allocate funds raised at a fun day the following month.

Disclosing confidential information

See Paragraph 5(a)

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

- you have the consent of the person authorised to give it
- you are required by law to do so.

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on his website at www.ico.gov.uk or by calling 0303 123 1113. As a community councillor you may have sight of sensitive information, for example of a commercial nature. You must also be mindful that, as a councillor, you hold a position of trust and you may find that members of the public will provide you with information that could reasonably be regarded as confidential and you should always confirm (where possible obtain an agreement in writing) that you have the permission to disclose such information before doing so. As a general rule, you should treat items discussed in the confidential sections of meetings (exempt items) as confidential. Similarly, legal advice is almost always covered by legal privilege and should not be disclosed.

Example

A Community Councillor S received an e-mail from another Councillor T regarding the employment of the caretaker. The e-mail was marked as confidential. Councillor S disclosed the e-mail to the caretaker's wife, information in the e-mails was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that Councillor S might have breached paragraph 5(a) of the Code.

Preventing access to information

See Paragraph 5(b)

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your Council which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 0303 123 1113 or for specific queries, you should ask your Monitoring Officer or Clerk.

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

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

Example

A leader of a county council refused to give the Council's Information Officer a letter he had written to the Wales Audit Office on behalf of the Council's Executive. As a result the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters. By the time the case was considered by the Panel the member had resigned from office. He was disqualified from holding office for 12 months.

Disrepute

See Paragraph 6(1)(a)

Any conduct unbecoming of a member can constitute disrepute

You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time. As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your Council.

Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life. Making unfair or inaccurate criticism of your Council in a public arena might well be regarded as bringing your Council into disrepute. Inappropriate e-mails to constituents or posts on social media might well bring the office of member into disrepute.

Example

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

Example

A member of a county borough council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10 year old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published she telephoned the councillor who she said was abusive towards her during the call. In a subsequent e-mail exchange the councillor told her that she had “failed to take any responsibility for her child allowing him out alone”, that her “ill educated in the highway code son” was to blame and said “don’t you dare try and shift your inadequacies as a parent upon me”.

The member was found in breach of paragraphs 4(b) (respect & consideration) and 6(1)(a) (disrepute). The matter was referred to the Adjudication Panel for Wales. Although the member had claimed to have apologised for his behaviour what he had actually said was “I have nothing to apologise for... I do apologise if, for some reason it upset you”.

The Panel found that the member had breached paragraphs 4(b) (treating others with respect) and 6(1)(a) (disrepute). He had previously been suspended by the Panel for 2 months for sending inappropriate e-mails in 2006. He was suspended for 12 months in respect of these breaches.

Reporting breaches of the Code

See Paragraph 6(1)(c)

If you reasonably believe that a breach of the Code has occurred, you must report it to me and to your Monitoring Officer. In order to have a reasonable belief that a breach has occurred, you will need to have evidence which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your Monitoring Officer may advise you of the likely threshold I will set. Nonetheless, the decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach I will use the two stage test which I have outlined on pages 6 and 7 above. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or e-mails. If there are other individuals who have witnessed the alleged breach, you should let us know who they are. This latter point is especially important as if I only have one person's word against another's, it is usually not possible for me to make a finding that a breach has occurred, and in the absence of independent confirmation, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

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

Vexatious complaints

See Paragraph 6(1)(d)

You must not make complaints against other members or staff members or people working on behalf of your Council which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process if there is one in place.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and so also may be a breach of the Code. You must report well-founded alleged

breaches to me and to your Monitoring Officer, not to your local newspaper or radio station. The press will properly cover the business of any hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should also avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about. In the past it has been necessary for my predecessor to correspond with the Clerk of a council in relation to their mutual concerns about the number of complaints received in respect of its members. As previously stated, since taking up my office I too have had concerns about the number of low level complaints that are still being received from members. Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and councils and generally harm public confidence in our elected members. Where it becomes apparent that repeated member against member complaints are being made to my office, I would urge those councils to reflect on the culture which has resulted in these complaints and consider how this behaviour might be changed to avoid such complaints.

Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate. Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph but may also be contrary to your other obligations under the Code such as the requirement not to bring your position as councillor into disrepute or not to use your position for an improper purpose.

You should note that the Code only applies to those who have been elected, co-opted or otherwise appointed to a body which is covered by the Code. It does not apply to members of the public. Whilst I appreciate that it can be frustrating if a member of the public makes repeated complaints against you which you consider to be vexatious or frivolous in nature, I am required to consider each complaint on its own merit. However, it is likely that such complaints would not pass the two stage test and result in an investigation.

Co-operating with investigations

See Paragraph 6(2)

You must co-operate with an investigation when it is being conducted by me or by your Monitoring Officer using our statutory powers. Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and your Monitoring Officer will make reasonable

allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code.

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

If you intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, for example, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

Using your position improperly

See Paragraph 7(a)

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. **This paragraph applies at all times** and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.

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

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought

the office of member or their authority into disrepute in breach of paragraphs 6(1)(a). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

Example

Councillor D was a 'joint co-ordinator' of a community group. Councillor D 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 on the Council improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not made the Council aware of. She was found in breach of paragraph 7(a) of the Code and suspended from acting as a councillor for four weeks.

The authority's resources

See Paragraph 7(b)

You must only use or authorise the use of the resources of the Council in accordance with its requirements. **This paragraph also applies at all times.** If your Council provides you with access to resources (for example telephone, computer and other IT facilities), you must only use these resources for carrying out your Council business and any other activity which your Council has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your Council. Failure to comply with your 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 your Council's rules.

Using resources for proper purposes only

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

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 guidance issued by your Council.

Example

A member of a county council was found in breach of the Code for making improper use of his council-owned computer equipment for private purposes by downloading inappropriate adult pornographic images and sending a number of letters to a local newspaper, which he falsely

represented as being from members of the public. The Adjudication Panel found that the member had misused the Council equipment in breach of the Code and had brought the office of member into disrepute. He was disqualified from being or becoming a member of a local authority for 2 years and 6 months.

Reaching decisions objectively

See Paragraph 8(a)

When taking part in meetings of your Council, or when arriving at decisions relating to the Council's business, you must do so with an open mind and objectively. During the decision-making process you must act fairly and take proper account of the public interest.

Most decisions taken by a community council relate to local matters and funding of local projects. Although the amounts of money being spent are smaller than at county level, all decisions must be taken on the basis of the facts in front of you, and you must not have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as pre-determination. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (pre-disposition) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

Pre-determination on the other hand would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

Considering advice provided to you and giving reasons

See Paragraph 8(b)

You must have regard to all of the advice you receive from your Clerk. The Clerk is usually also the Proper Officer and it is part of their role to research the policy, guidelines and legislation relevant to advice given when taking decisions.

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

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

As a matter of good practice, where you disagree with the Clerk's recommendations in making a decision, you should give clear reasons for your decision. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes.

Expenses

See Paragraph 9(a)

You need to follow the law and your Council's requirements in claiming expenses and allowances. If you are in any doubt about your entitlements, or the proper way to claim, you should ask your Clerk for advice. You need to keep proper records of expenditure supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming for.

Gifts and hospitality

See Paragraph 9(b)

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

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

3. Personal and prejudicial interests

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

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

In my experience it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members.

The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Clerk for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached a flowchart to this guidance, based on a document prepared by Rhondda Cynon Taf County Borough Council, which is designed to take you through the questions that you should ask when deciding whether you have an interest. It is for illustration purposes only and is not definitive.

Guidance on registering interests is at Section 4.

Personal Interests

See Paragraph 10

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

Listed below are some questions that you should ask when deciding if you have an interest.

Do you have a link or close connection to the item to be considered?

Do I have a personal interest?

You have a personal interest in any business of your Council, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your Council's area
5. any contract that your Council makes with a firm in which you are a partner, paid director or hold shares in as described in 4
6. any land in which you have an interest and which is in your Council's area (this is especially important in all planning matters including strategic plans)
7. any land let by your Council to a firm in which you're a partner, paid director or a body as set out in 4
8. any body to which you've been elected, appointed or nominated by your Council
9. any:
 - public authority or body exercising functions of a public nature
 - company, industrial and provident society, charity or body directed to charitable purposes
 - body whose main role is influencing public opinion or policy
 - trade union or professional association
 - private club, society or association operating in your Council's area in which you have membership or are in a position of general control or management, or
10. any land in your Council's area which you have a license to occupy for at least 28 days.

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

Matters affecting your well being or financial position

If a decision might be seen as affecting your well being or financial position or the well being or financial position of any person who lives with you or with whom you have a close personal association to a greater extent than other people in your Council's area, you have a personal interest. Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

What is “a body exercising functions of a public nature”?

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

- Does that body carry out a public service?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

When conducting community council business it is likely that you will be acting on a body which is exercising functions of a public nature. You may also be doing this if you have been appointed to act on behalf of the Council on a community project or interest group.

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

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

Who is a close personal associate?

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

Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

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

“Twin hatted” members

If you are a member of both a community council and a county council you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8(a) of the Code is also relevant here.

Obviously, if the application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “What to do when you have a prejudicial interest” below.

Example

Councillor F participated in a meeting which was considering whether to approve the complainant’s nomination for the post of school governor; Councillor F’s husband had also applied for the post. Not only did the Adjudication Panel find that she should have declared a personal interest in the item of business by virtue of her close personal association with her husband, but it also took the view that as there had been a history of animosity directed towards the member by the complainant which had been reported publicly, she also had a personal interest by virtue of her close personal association with the complainant.

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

What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

What to do when you have a personal interest

See Paragraph 11

If you decide that you have a personal interest then you must take the following action before the matter is discussed or as soon as it becomes apparent to you except in limited circumstances:

- declare that you have a personal interest, and the nature of that interest
 - at meetings
 - when making written representations (including e-mails, faxes etc.)
 - when making oral representations, even if your interest is on the register of interests.
- confirm your interest by e-mail or in writing to the officer concerned and to the Clerk within 14 days
- consider whether you have a prejudicial interest (see below).

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

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

Once disclosed you can stay & participate if your interest is not prejudicial

Prejudicial Interests

See Paragraph 12

Do I have a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest. There are exemptions to this which are contained in paragraph 12(2) of the Code although many of the examples are unlikely to apply to business undertaken by a community council.

Do not be swayed by what you think - consider what a member of the public would reasonably think

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

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. **This is an objective test.** You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

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

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

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

You would have a prejudicial interest in the consideration and decision on whether to support a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of your Council area and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

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

Community councillors do not have a prejudicial interest in decisions made by their Council in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value does not exceed £500. Furthermore community councillors who have been appointed to the community group or voluntary organisation concerned by their Community Council, for example, e.g. to the board of a community hall, will not have a prejudicial interest in decisions made by their Council in respect of any grants, loans or other financial assistance. If, on the other hand, you are on such a board in your own capacity and have not been appointed by your Council, then you will have a prejudicial interest.

What to do when you have a prejudicial interest

See Paragraph 14

If you consider that you have a prejudicial interest in your Council's business you must take certain action.

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

Key point:

If you have a prejudicial interest in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room (or any other venue in which the meeting is being held including, for example, the location of a site meeting).

This is unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose. However, you must immediately leave the room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot remain in the public gallery to observe the vote on the matter.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that as well as leaving meetings where the item is discussed, you should also not write or make any oral representations about the matter.

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your Council's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

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

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

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

What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision making process.

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

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

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

Example

Councillor R attended a workshop with the Local Park Authority relating to the consideration of land for inclusion in the Local Development Plan (LDP). Councillor R had previously submitted an application for land he owned to be included in the LDP. I considered that Councillor R had a prejudicial interest in the item which was being discussed as the outcome could have a significant impact on his property and could affect his financial well being. The Standards Committee found that he was in breach of paragraph 14(1)(a) of the Code by not declaring an interest and failing to leave the room when discussions concerning the area in which his own land was situated took place.

Dispensations

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

You can apply in writing to your County Council's Standards Committee for a dispensation to speak and/or vote on a matter on one or more of the following grounds:

- at least 50 per cent of the Council or committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter, or

- the committee believes that your participation would be in the interests of the people in your Council's area and that the committee notifies Welsh Ministers within seven days.

You can apply for a dispensation individually and in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

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

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

4. Registration of Interests

Gifts and hospitality

Key points:

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

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

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

You should ask yourself, would I have been given this if I was not on the Council? If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Clerk.

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

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

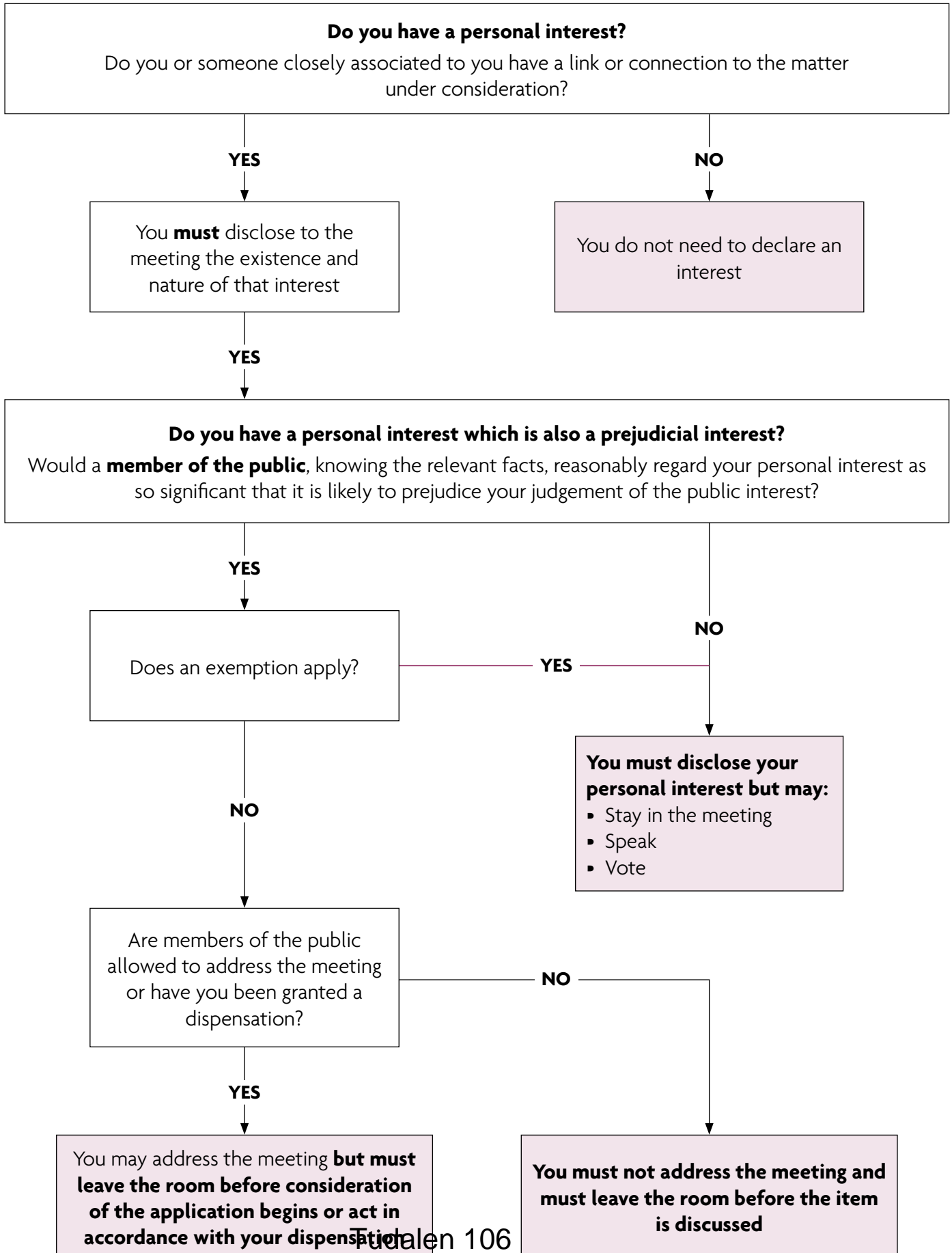
The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

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

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

Declaration of personal and prejudicial interests

Questions to ask yourself. If in doubt you should ask your Clerk or your Monitoring Officer.



Public Services Ombudsman for Wales
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Pencoed
CF35 5LJ

Tel: 01656 641150

Fax: 01656 641199

E-mail: ask@ombudsman-wales.org.uk

Web: www.ombudsman-wales.org.uk

Mae tudalen hwn yn fwriadol wag

Adroddiad i'r:	Pwyllgor Safonau
Dyddiad y Cyfarfod:	22 Mai 2015
Arweinydd/Swyddog:	Pennaeth y Gyfraith, Adnoddau Dynol a'r Gwasanaethau Democrataidd
Awdur yr Adroddiad:	Rheolwr y Gwasanaethau Democrataidd
Teitl:	Datgan Cysylltiadau a Lletygarwch

1. Am beth mae'r adroddiad yn sôn?

Mae'r adroddiad hwn yn amlinellu'r gweithdrefnau y dylai aelodau eu dilyn wrth gwblhau'r gofrestr cysylltiadau ac wrth ddatgan cysylltiad ag eitemau o fusnes mewn cyfarfodydd y maent yn eu mynychu. Mae hefyd yn edrych ar gofnodi lletygarwch a rhoddion a gynigir i aelodau a swyddogion.

2. Beth yw'r rheswm dros lunio'r adroddiad hwn?

Mae'r Cyngor wedi bod yn datblygu prosesau dros y flwyddyn ddiwethaf a bellach y bwriad yw adrodd yn flynyddol i'r Pwyllgor Safonau pa mor dda y mae'r prosesau'n arwain at gydymffurfiaeth o ran datganiadau gorfodol o fewn Cyngor Sir Ddinbych.

3. Beth yw'r Argymhellion?

Bod y Pwyllgor Safonau yn:

- (a) trafod y prosesau a'r canlyniadau a geir o ran cydymffurfio â rhwymedigaethau gorfodol i ddatgan cysylltiadau a lletygarwch; ac yn
- (b) cytuno i adolygu materion yn ymwneud â datgan cysylltiadau, rhoddion a lletygarwch yn flynyddol.

4. Manylion yr Adroddiad

4.1 Mae rhan 3 Cod Ymddygiad yr Aelodau yng Nghyfansoddiad y Cyngor yn ei gwneud yn ofynnol i aelodau ystyried a oes ganddynt gysylltiad personol â'r busnes y maent yn ymwneud ag o yn eu swyddogaethau fel aelodau o'r cyngor. Mae rhan 4 o'r Cod yn ymdrin â chofrestru cysylltiadau ariannol a chysylltiadau eraill, ac aelodaeth a swyddi rheoli y mae'r Aelodau yn eu dal y dylid eu datgan.

4.2 Mae'r darpariaethau a amlinellir yn y Cod Ymddygiad yn cydymffurfio â Rhan 3 Deddf Llywodraeth Leol 2000 drwy fod y Cyngor yn darparu cyngor a gweithdrefnau i gefnogi aelodau i gyflawni eu rhwymedigaethau. I gychwyn, caiff ffurflen i gofrestru cysylltiadau ei chynnwys ym mhecynnau sefydlu pob aelod yn dilyn etholiad llywodraeth leol, yn fwyaf diweddar yn 2012 ac ar gyfer unrhyw

isetholiadau dilynol. Cedwir copi caled o'r cofrestrau hyn wedi'u llofnodi ac maent ar gael i'w harchwilio ar gais.

4.3 Roedd y pecynnau sefydlu wedi'r etholiad hefyd yn cynnwys llyfryn sy'n manylu ar y gofynion i ddatgan cysylltiadau personol a rhagfarnol yn ogystal â gofynion ehangach y Cod Ymddygiad, ac ategir hynny â hyfforddiant gorfodol i bob aelod gan y Swyddog Monitro ynglŷn â goblygiadau'r Cod Ymddygiad.

4.4 Mae Adran 58 Deddf Llywodraeth Leol (Democratiaeth)(Cymru) 2013 a ddaeth i rym y mis hwn, am y tro cyntaf, yn ei gwneud yn ofynnol i gyhoeddi cofrestrau cysylltiadau aelodau'n electronig . Mae'r Cyngor wedi bod yn trosglwyddo'r cofrestrau i adran *Eich Cyngor* ar y wefan gyhoeddus lle ceir gwybodaeth am yr aelodau etholedig. Er mwyn cefnogi'r gwaith hwn o drosglwyddo'r wybodaeth, cysylltwyd â'r holl gynghorwyr gan ofyn iddynt ddiweddarau neu gadarnhau fod yr wybodaeth a ddarparwyd ganddynt yn wreiddiol yn dal yn gywir ar y cofrestrau.

Datgan Cysylltiadau mewn Cyfarfodydd

4.5 Mae'r proffil a roddir i gefnogi datgan cysylltiadau mewn cyfarfodydd pwyllgor wedi codi'n sylweddol ers yr egwyl dros yr haf yn 2014. Ychwanegwyd copïau o'r ffurflen a ddarparwyd i gynorthwyo aelodau i wneud datganiad wedi'i lofnodi at yr eitem *Datgan Cysylltiad* safonol ar bob rhaglen a diwygiwyd y ffurflen honno wedyn i gyfarch diffyg eglurder rhai datganiadau o ran natur y cysylltiad sy'n cael ei ddatgan (gweler Atodiad A). At hynny, dechreuwyd dosbarthu copïau wedi eu hargraffu o'r ffurflenni i bob aelod cyn pob prif gyfarfod pwyllgor gan gasglu copïau nas defnyddiwyd i'w haildefnyddio er mwyn osgoi gwastraff.

4.6 Yn ogystal â'u cofnodi yn y cofnodion mae Cyngor Sir Ddinbych wedi dechrau ychwanegu cysylltiadau personol sydd wedi eu datgan mewn cyfarfodydd at wefan y Cyngor yn ystod ail hanner 2014 a dyma'r arfer safonol bellach.

4.7 Ers tymor yr hydref 2014 mae pob cyfarfod o'r Cyngor llawn wedi dechrau wrth i'r Swyddog Monitro ddarllen testun ffurfiol ynglŷn â datgan cysylltiad tra bo'r swyddog cyfreithiol sy'n bresennol yng nghyfarfodydd y Pwyllgor Cynllunio yn rhoi'r un cyngor. Gan fod pob Cynghorydd yn aelodau o'r Cyngor llawn a bod 30 o'r 47 aelod yn aelodau o'r Pwyllgor Cynllunio dywedir wrth yr aelodau'n rheolaidd pa mor bwysig yw gwneud datganiadau priodol ac mae gan yr aelodau gyfle i holi cwestiynau i'r uwch swyddogion hyn ynglŷn â'u cysylltiadau â'r busnes sydd ger eu bron. Cyhoeddwyd sawl nodyn atgoffa ysgrifenedig dros y 12 mis diwethaf mewn nifer o fformatau (gweler Atodiad B fel enghraifft) ynglŷn â'r Cod Ymddygiad a sut i gydymffurfio â'r gofynion.

Anrhegion a Lletygarwch

4.8 Rhaid i Aelodau osgoi derbyn rhoddion, lletygarwch (ac eithrio lletygarwch swyddogol, megis derbyniad dinesig neu ginio gweithio a awdurdodwyd yn briodol gan yr awdurdod), buddion materol neu wasanaethau er budd personol nac er budd unrhyw berson a allai eu rhoi, neu ymddangos fel pe gallai'n rhesymol eu rhoi, o dan rwymedigaeth amhriodol. Mae gofyn cofrestru rhoddion, lletygarwch neu fuddion eraill ac ati, sydd werth mwy na £25 gyda'r Swyddog Monitro.

4.9 Rhaid i weithwyr hefyd fod yn ymwybodol ei bod yn drosedd i roi neu dderbyn rhoddion neu unrhyw wobwr mewn modd llwgr yn rhinwedd eu swydd, er mwyn dangos ffafriaeth neu anffafriaeth neu er mwyn gwneud neu beidio â gwneud unrhyw beth. Dywed *Cod Ymddygiad y Swyddogion* sut y dylid ymdrin â chynigion o roddion a lletygarwch i swyddogion.

4.10 Mae Pennaeth y Gyfraith, Adnoddau Dynol a'r Gwasanaethau Democrataidd yn cadw cofrestr lle cofnodir datganiadau o roddion a lletygarwch gyda gwybodaeth am y rhoddwr a'r derbynnydd, disgrifiad o'r rhodd neu'r lletygarwch a gynigir ynghyd â'i werth, y dyddiad a'r rheswm dros y cynnig. Ei fwriad yw safoni a rhoi cyhoeddusrwydd i faterion yn ymwneud â rhoddion a lletygarwch drwy gyhoeddi canllawiau ynghyd â ffurflen safonol newydd arfaethedig i'w defnyddio gan aelodau a swyddogion (gweler Atodiad C).

Adolygiad gan yr Adran Archwilio Mewnol

4.11 Cynhaliodd Tîm Archwilio Mewnol Cyngor Sir Ddinbych adolygiad o'r prosesau datgan cysylltiad a lletygarwch ym mis Awst 2014 fel rhan o'u gwaith ar Fframwaith Sicrwydd Trefn Lywodraethu Gorfforaethol y Cyngor.

4.12 Daeth yr Adran Archwilio Mewnol i'r casgliad eu bod yn fodlon bod rheolaeth eithaf da ar waith ar gyfer cofnodi datgan cysylltiadau a derbyn rhoddion a lletygarwch. Fodd bynnag, canfuwyd y gallai'r prosesau fod yn fwy cadarn ac effeithlon o ran y ffordd y mae'r wybodaeth yn cael ei chofnodi a'i hadolygu ac y byddai hynny'n helpu i sicrhau y gellid nodi unrhyw fylchau neu gamgymeriadau yn hawdd. Fel rhan o'r adolygiad roedd Pennaeth y Gyfraith, Adnoddau Dynol a'r Gwasanaethau Democrataidd wedi amlygu anghysondebau yn y modd y câi ffurflenni datgan cysylltiad eu llenwi a arweiniodd at gyflwyno canllawiau a gweithdrefnau newydd ar gyfer ail hanner y flwyddyn ddiwethaf.

5. Sut mae'r penderfyniad yn cyfrannu at y Blaenoriaethau Corfforaethol?

Dim cyfraniad uniongyrchol ond mae bod â threfniadau llywodraethu da yn hanfodol i berfformiad y Cyngor ac mae bod â safonau uchel o ran ymddygiad moesegol a thryloywder yn nodweddiadol allweddol yn hynny o beth.

6. Faint fydd hyn yn ei gostio a sut y bydd yn effeithio ar wasanaethau eraill?

Nid oes unrhyw oblygiadau ariannol ychwanegol o ganlyniad i'r adroddiad hwn ac eithrio amser swyddogion yn Adran y Gyfraith, Adnoddau Dynol a'r Gwasanaethau Democrataidd wrth gynnal y prosesau a amlygwyd.

7. Beth yw prif gasgliadau'r Aseiad o Effaith ar Gydraddoldeb a wnaed ar y penderfyniad? Dylid atodi templed yr Aseiad o Effaith ar Gydraddoldeb wedi ei llenwi fel atodiad i'r adroddiad hwn.

Nid oes angen asesiad o effaith ar gydraddoldeb ar gyfer y meysydd sy'n cael eu trafod yn yr adroddiad hwn.

8. Pa ymgynghori a wnaed â'r Pwyllgorau Archwilio ac eraill?

Ymgynghorir â'r Pwyllgor Safonau yn dilyn cytundeb rhwng yr adran a'r Adran Archwilio Mewnol i godi proffil datgan cysylltiadau a lletygarwch ac i sicrhau bod trefniadau llywodraethu cadarn ar waith.

9. Datganiad y Prif Swyddog Cyllid

Nid oes angen datganiad gan y Prif Swyddog Cyllid ar gyfer yr adroddiad hwn.

10. Pa risgiau sydd ac a oes unrhyw beth y gallwn ei wneud i'w lleihau?

Mae risg y gall aelodau'r Cyngor beidio â chyflawni eu rhwymedigaethau cyfreithiol a'u rhwymedigaethau o ran y Cod Ymddygiad oni bai bod gan y Cyngor reolaeth effeithiol ar waith.

11. Pŵer i wneud y Penderfyniad

Rhan 3 Deddf Llywodraeth Leol 2000

Adran 58 Deddf Llywodraeth Leol (Democratiaeth)(Cymru) 2013

Cod Ymddygiad Aelodau

Appendix A

DATGELU A CHOFRESTRU BUDDIANNAU

Rwyf i,
(enw)

*Aelod /Aelod cyfetholedig o
(*dileuer un)

Cyngor Sir Ddinbych

YN CADARNHAU fy mod wedi datgan buddiant ***personol / personol a sy'n rhagfarnu** nas datgelwyd eisoes yn ôl darpariaeth Rhan III cod ymddygiad y Cyngor Sir i Aelodau am y canlynol:-
(*dileuer un)

Dyddiad Datgelu:

Pwyllgor (nodwch):

Agenda eitem

Pwnc:

Natur y Buddiant:

(Gweler y nodyn isod)*

Llofnod

Dyddiad

Noder: Rhowch ddigon o fanylion os gwelwch yn dda, e.e. 'Fi yw perchennog y tir sy'n gyfagos i'r cais ar gyfer caniatâd cynllunio a wnaed gan Mr Jones', neu 'Mae fy ngŵr / ngwraig yn un o weithwyr y cwmni sydd wedi gwneud cais am gymorth ariannol'.

Code of Conduct for Members

DISCLOSURE AND REGISTRATION OF INTERESTS

I, *(name)*

a *member/co-opted member of
*(*please delete as appropriate)*

Denbighshire County Council

CONFIRM that I have declared a ***personal / personal and prejudicial** interest not previously declared in accordance with the provisions of Part III of the Council's Code of Conduct for Members, in respect of the following:-

*(*please delete as appropriate)*

Date of Disclosure:

Committee *(please specify)*:

Agenda Item No.

Subject Matter:

Nature of Interest:

*(See the note below)**

Signed

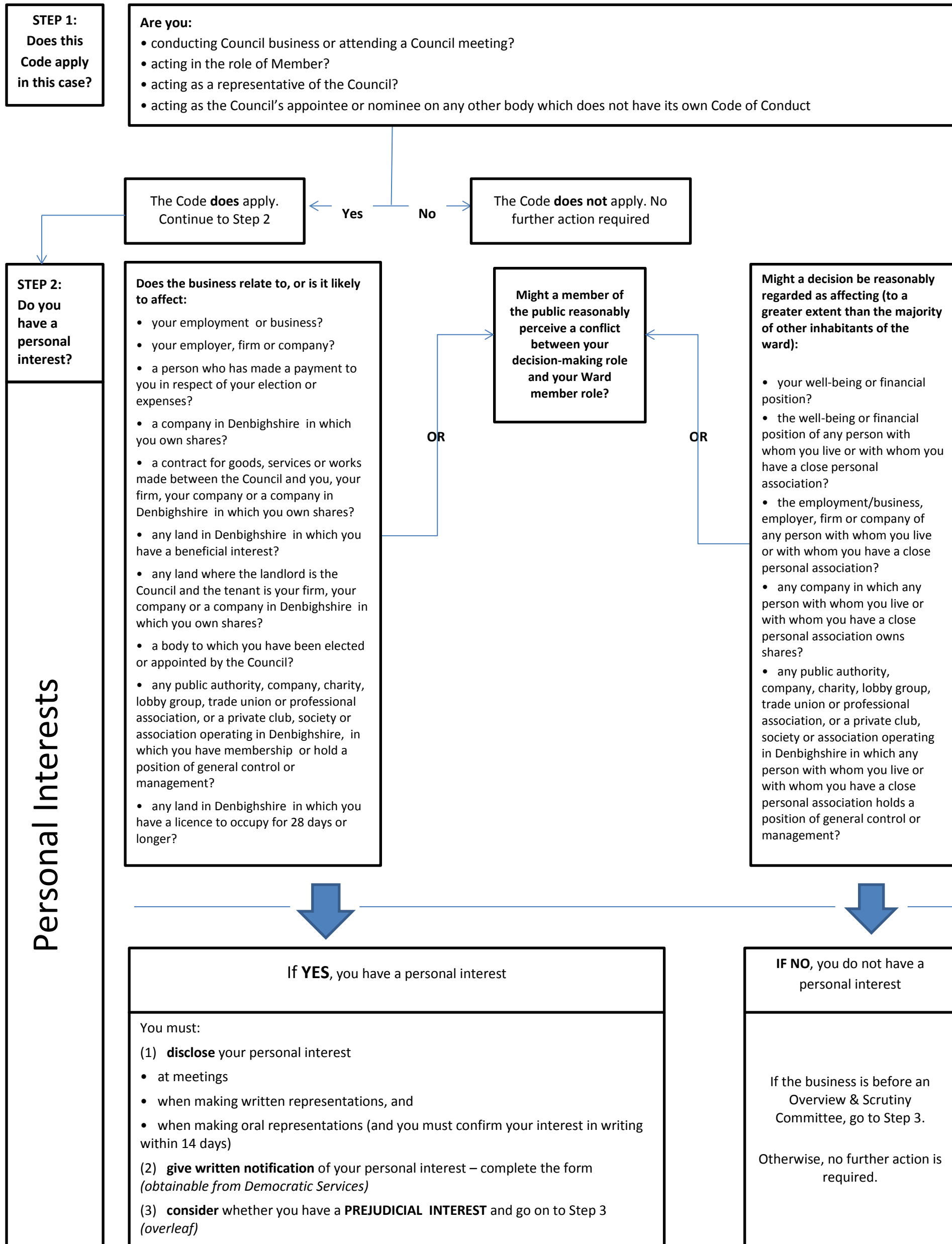
Date

*Note: Please provide sufficient detail e.g. 'I am the owner of land adjacent to the application for planning permission made by Mr Jones', or 'My husband / wife is an employee of the company which has made an application for financial assistance'.

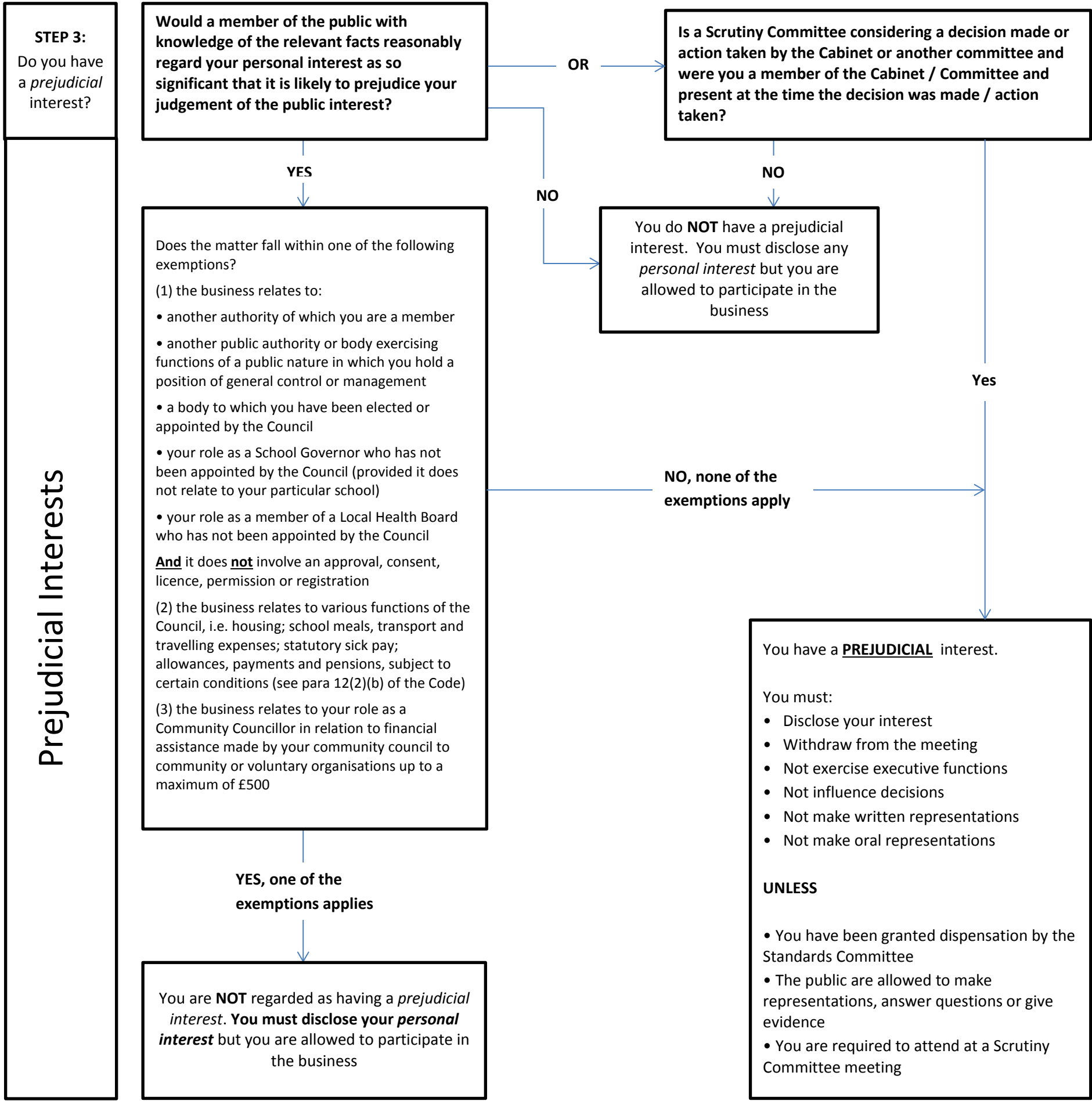
Code of Conduct: Declaring an Interest – Questions to ask yourself

These charts are for illustration only and are not definitive. If in doubt, please consult the Monitoring Officer

Appendix B



Personal Interests



DECLARATION FOR REGISTER OF GIFTS AND HOSPITALITY

Date Gift / Hospitality Offered			
Name of Recipient			
Name of Donor of Gift / Hospitality			
Description of Gift / Hospitality:			
Reason for Donation:			
Value:	Accepted (please tick)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If declined or donated onwards please describe (e.g. donated for raffle to Chair's charity):			
Declaration made by (Print):			
Job Title / Member Role ⁱ :			
Signed		Date	

ⁱ E.g. Lead Member for [portfolio], Chair of [committee] or Councillor.

Mae tudalen hwn yn fwriadol wag

ADRODDIAD I'R: Pwyllgor Safonau

SWYDDOG ARWEINIOL: Gary Williams, Swyddog Monitro

ADRODDIAD GAN: Lisa Jones, Dirprwy Swyddog Monitro

DYDDIAD: 22 Mai 2015

TESTUN: Hyfforddiant ar gyfer Cadeiryddion ac Is-Gadeiryddion
Cynghorau Tref, Dinas a Chymuned

1. PWRPAS YR ADRODDIAD

Darparu adroddiad gwybodaeth i Aelodau ynglŷn â hyfforddiant arfaethedig i Gadeiryddion ac Is-Gadeiryddion.

2. CEFNDIR

Mae aelodau'r Pwyllgor Safonau wedi pwysleisio manteision hyfforddi Cadeiryddion ac Is-gadeiryddion, fel rhan o'r dull cyffredinol i godi safonau moesegol ymhlith aelodau etholedig. Bydd sgiliau cadeirio da hefyd yn cyfrannu at wneud penderfyniad effeithiol a chyfreithlon sydd yn amlwg o fudd democratiaeth leol.

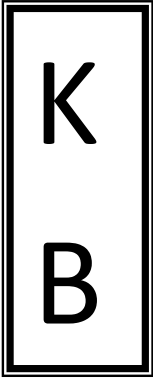
Mae'r adroddiad hwn yn darparu manylion i'r aelodau am yr hyfforddiant sydd i'w ddarparu gan yr hyfforddwr allanol Kim Bedford. Mae taflen wedi'i pharatoi i hysbysebu'r digwyddiad ymhlith pob cyngor cymuned ac amgaeir yn Atodiad 1.

Cynhelir yr hyfforddiant arfaethedig fel digwyddiad hanner diwrnod ar 29 Mehefin 2015 o 1.30pm. Ysgrifennwyd at holl glercod y Cynghorau Tref, Dinas a Chymuned i gadarnhau presenoldeb. Oherwydd y gost a ddaw gan y Cyngor Sir, codir tâl i dalu'r costau hyn am £35 y pen. Rhagwelir y bydd y galw yn eithaf uchel a'r bwriad yw cyfyngu ar y lleoedd i ddau fesul Cyngor, sef y Cadeiryddion presennol neu ddarpar Gadeiryddion ac Is-gadeiryddion.

3 ARGYMHELLIAD

3.1 Bod yr Aelodau yn nodi cynnwys yr adroddiad hwn.

Mae tudalen hwn yn fwriadol wag



SGILIAU CADEIRIO

Dydd Llun 29 Mehefin 2015

1.30 pm – 5.00 pm

Cyflwynir gan Kim Bedford. FILCM

Rheoli ac arwain pobl yw un o'r sefyllfaoedd mwyaf heriol a wynebwn. Fel arweinydd cymunedol byddwch yn archwilio:-

- Y gyfraith / rheolau wrth reoli cyfarfodydd
- Cysylltiadau allweddol, adeiladu tîm
- Sut i ddelio â gwrthdaro
- Ymgysylltu â'r gymuned, ei ddylanwad
- Creu rhaglen i'r dyfodol..... gweledigaeth
- Goblygiadau ar gyfer adnoddau a chyllidebau

A chyfle i rwydweithio â chydweithwyr a rhannu profiadau.

Kim Bedford. **kimbedford@btinternet.com**

Mae tudalen hwn yn fwriadol wag

Document is Restricted

Mae tudalen hwn yn fwriadol wag