

# **The Code of Conduct**

## for members of local authorities in Wales

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

## Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). 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 (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales. I have issued separate guidance for members of community and town councils.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up 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 local government employees in Wales.<sup>2</sup>

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

The guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclose and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted 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.

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<sup>1</sup> In legislation, ‘community council’ includes a ‘town council’.

<sup>2</sup> Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

The guidance 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 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 community and town councillors, as this is included in the separate guidance I have issued for such councillors.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the quarterly “Code of Conduct Casebook”, which is on my website at [www.ombudsman.wales](http://www.ombudsman.wales)


I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.

As a member, you will be offered training on the Code, from a Monitoring Officer or 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 for dealing with ‘member versus member’ complaints, which have proved very effective as a means of resolving many of these cases.

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in

these challenging times, 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 in all of our communities.

A handwritten signature in black ink, appearing to read 'Nick Bennett', enclosed within a thin black rectangular border.

Nick Bennett  
Public Services Ombudsman for Wales  
xxxxx 2021

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
- national park authorities
- police and crime panels in Wales

## Acknowledgement

I would like to thank the legal services department of Ceredigion County Council for the use of its flowchart on interests which are appended to this guidance.

Separate guidance is available for members of community and town councils.

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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 (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>3</sup> which all relevant authorities were required to adopt.<sup>4</sup>

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>5</sup>

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 is 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<sup>6</sup> are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees.

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<sup>3</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>5</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

<sup>6</sup> A county or county borough council in Wales



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 are contrary to relevant advice from officers 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.

### Investigations: Assessing the Public Interest

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of 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 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, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- 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.

### Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup> In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee

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<sup>7</sup> Calver, R (on the application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).

that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments 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 (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician’s right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook', which summarises cases I have investigated, is available on my website at [www.ombudsman.wales](http://www.ombudsman.wales).

### Local Resolution Process

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 an effective and proportionate means of 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 the first instance.

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, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, 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 for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

Local resolution can also play an important role within community councils where, all too often, low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

### Standards Committee

The Standards Committee established by your authority is responsible for promoting and maintaining high standards of conduct by the authority's members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or your authority's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the authority. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also 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
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

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

### Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- 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.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an ‘interim case tribunal’, which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an ‘appeals tribunal’ is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

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 (improperly using the position of member).

Further information about the role and procedures of the Adjudication Panel and its tribunals can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Principles

The Local Government Act 2000 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 first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council’s resources and equality and respect for others.

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

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>8</sup> and are replicated 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 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.

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<sup>8</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2002 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

Consider conduct in your  
public and private life

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, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, 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.

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 are pertinent.

### When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council 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 (paragraph 2(1)(a)-(c)).

- **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 improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

**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 its code of conduct** (paragraph 3(a)). 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.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

**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 (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, 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.wales](http://www.wlga.wales) 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 1 – compliance with another body's code (paragraph 3(a))**

A member 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 email to the Chief Executive of the Council. The Councillor admitted sending the email 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. The Councillor 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 2 – official capacity and misuse of resources (paragraphs 2 and 7)**

An online poll about a person accused of murder which contained inappropriate language was set up using a member's council-provided laptop, internet access and his council email address. The member said he personally had not set up the poll. The Adjudication Panel found that, as the Council had provided him with the laptop, he was responsible for it and its proper use. 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 rejected his assertion that the comments had been made in a personal capacity, finding that the member had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.

### **Example 3 – official capacity (paragraph 2)**

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

## 2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of 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.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

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 4**

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 the member 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 the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### **Example 5**

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy and the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

### Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

**When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public, colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the ECHR provides a right to freedom of expression and information, subject to certain restrictions. 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.

Your freedom of expression as a member attracts enhanced protection when comments you make 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 a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

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 disable them from carrying out their duties or undermine public confidence in the administration. That said, 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.



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 members 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.

### Example 6

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code; and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack in some form or other on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR. The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

### Example 7

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee 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 his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

### Example 8

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing, the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

**Bullying and harassment**  
See paragraph 4(c)

**Consider your conduct  
from the other  
person's perspective**

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

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a 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 in my comments about 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.

The High Court has 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.

The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 9**

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so, as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to

use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

### Example 10

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

### Compromising the impartiality of officers of the authority See paragraph 4(d)

**You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council.** 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 ask 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 11**

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 an 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, through 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.

### Example 12

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

### 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 the Commissioner's website at [www.ico.org.uk](http://www.ico.org.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 as confidential. 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.

I expect information provided to members during the course of an investigation by my office 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 13**

A member of a County Borough Council who sat on the Council's adoption panel disclosed to a third party details of a person who had applied to the panel to adopt a child and the outcome of the application. 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.

### **Example 14**

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).



### 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.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Monitoring Officer.

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 under the Freedom of Information Act. 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 15**

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then 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.

## 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 the public perception of your office as a member, or your authority as a whole. 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 (see also paragraph 6(2)).

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.

Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

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 16

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself by misrepresenting the purchase as being on behalf of the Council and his abusive behaviour towards the staff had brought the office of member into disrepute.

### Example 17

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

### Reporting criminal behaviour See paragraph 6(1)(b)

**The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your authority (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your authority's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your authority's Monitoring Officer.

### 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 the Monitoring Officer.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) 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.

Your Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. 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 suggest that the matter would be more appropriately dealt with through the authority's local resolution process.

In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

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 that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint, including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me 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 potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). 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 vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

You must not make complaints against other members, your authority's officers 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 your Monitoring Officer - not to your local newspaper or radio station. The press will properly cover the business of any subsequent 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 whether you have failed to comply with the Code in submitting the complaint. **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 (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

### Example 18

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

### 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, including electronic communications such as emails and texts. 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. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

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 you may, for example, 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.

### Example 19

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales. During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### Using your position improperly See paragraph 7(a)

**You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> 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.

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<sup>9</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

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) and (b). 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 20**

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 emailed 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 email, 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.

### **Example 21**

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this



amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

### Example 22

A member of a County Borough Council made representations to council officers on behalf of a constituent about matters relating to the purchase by the constituent of a parcel of Council-owned land through a tender process. This included the removal of a restrictive covenant which rendered the land of little value to the constituent given his intention to develop it. The member volunteered in evidence before the Council's Standards Committee that his involvement was a possible way of mitigating legal costs for his constituent. Throughout his involvement, the member failed to disclose that he had a close personal association with the constituent, who he had known for 40 years and regarded as a close personal friend who he saw almost daily. The Standards Committee found that the member had breached paragraph 7(a) (and other paragraphs) of the Code in that through his interventions he had sought to use his position improperly to confer an advantage upon and avoid a disadvantage for his friend. This would potentially create a disadvantage for any member of the public who might wish to express an interest in the land had it been on the open market (as the absence of the restriction would have required), especially the lower bidder in the original tender process.

### Using the authority's resources See sub-paragraphs 7(b)(i) – (iv)

**You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply 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 sub-paragraphs 7(b)(v) and (vi)

**You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or 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, for example, your authority's Information Security Policy.

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 emails as part of an election campaign, for example, would not be appropriate.

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

### Example 23

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 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.

### Example 24

A member of a County Borough Council was found by the Adjudication Panel to have breached the Code by 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.

### 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 consider the issues objectively, having regard to any relevant advice of your authority's officers.** 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 or where you are participating in the consideration of a ward matter, 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 give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your authority.**

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 seek and obtain 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 25**

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 then 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, the member failed to have regard to the limited advice the Monitoring Officer 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 it did.

### 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 26

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 of this guidance on registering gifts and hospitality under paragraph 17 of the Code.)

## 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 reasonably conclude that the interest is likely to 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 former 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

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

**While you are carrying out your duties, you must consider whether 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 yourself when deciding if you have an interest:

### **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, above)
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, above)
8. any body to which you've been elected, appointed or nominated by your authority
9. any of the following in which you have membership or hold a position of general control or management:
  - 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
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.

### 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.

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

### 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 a member or your work in the local community.

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 or county borough 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 of the Code is also relevant here.

Obviously, if the planning 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 if you have a prejudicial interest” below.

### Example 27

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public

perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### Example 28

A member of a County Borough Council made numerous representations to his Council's officers on behalf of a constituent who was involved in the purchase of Council-owned land that was being sold by way of a tender process. The member and constituent were long-standing close personal friends, having been acquainted for some 40 years. The constituent stood to gain financially from the member's intervention. The Adjudication Panel found that the member did not consider (as required by paragraph 10(1) of the Code) whether he had a 'personal interest' when he spoke, wrote and attended meetings about the land; and he did not disclose the existence and nature of the interest in breach of paragraph 11. The Panel found that the member's personal interest was so significant as also to be a 'prejudicial interest'. The Panel, therefore, found that the member also failed to comply with paragraph 14 of the Code, in that he should not have made oral or written representations or attended meetings to discuss the matter on behalf of his constituent.

### 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**

When you have a personal interest in any business of your authority, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

If you are attending a **meeting**,<sup>10</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. 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 are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

**Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

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.

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<sup>10</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present (other than political group meetings), not just formal meetings of the authority. For example, it can include an informal meeting of a member and officer.

If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), 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 on paragraph 16 of the Code 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.

### Example 29

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

## 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 and:

- the matter does not fall within one of the exempt categories of business (see below), or
- the exempt categories do not apply because the matter relates to a licensing or regulatory matter (see paragraph 12(3)).

### 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 influenced by this when voting, whether this is the case or not.

### Does the matter fall within one of the exemptions? See paragraph 12(2)

You 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 (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) 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 that child attends
- decisions about statutory sick pay, if you receive or are entitled to receive it from your
- authority
- an allowance, payment or pension 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 (see paragraph 12(3)). 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 30

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. 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 paragraphs 11 and 14 of the Code to be serious ones.

### Example 31

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
- 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

You must declare your interest and withdraw from the room

If you have a prejudicial interest in any aspect of your authority's business, you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.

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, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

**This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter,** by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place 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, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

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 must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

### Example 32

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### 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. The Code also provides the right to submit written representations to the public meeting in these circumstances. 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, however, take part in the discussion or observe the vote.

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

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, 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. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 33

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel

found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### 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 or submit written representations 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, whereas the public may be allowed to sit in the public gallery to observe the meeting, you must 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.

#### Example 34

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her; the member having entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

### 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?

Standards committees have powers under regulations made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

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
- the Committee believes that your participation would be in the interests of the people in your authority's area



- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

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 Personal Interests

See paragraph 15

### Key points

All members of relevant authorities have to provide a record of their personal 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 new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.

You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

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.

The categories of personal interest set out in paragraph 10(2)(a) of the Code that you must register 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
- any other bodies to which you were elected, appointed or nominated by the authority
- your membership or position of control or management in:
  - 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** **See Paragraph 16**

#### **Key points**

You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.

‘Sensitive information’ is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

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. If the Monitoring Officer has agreed 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.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Monitoring Officer within 28 days asking them to include the information in the register.

### Gifts and hospitality See Paragraph 17

#### 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 or hospitality which you have declined and this may be a requirement of your authority’s gifts and hospitality policy.

### 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 a member of the authority?” 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 (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

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

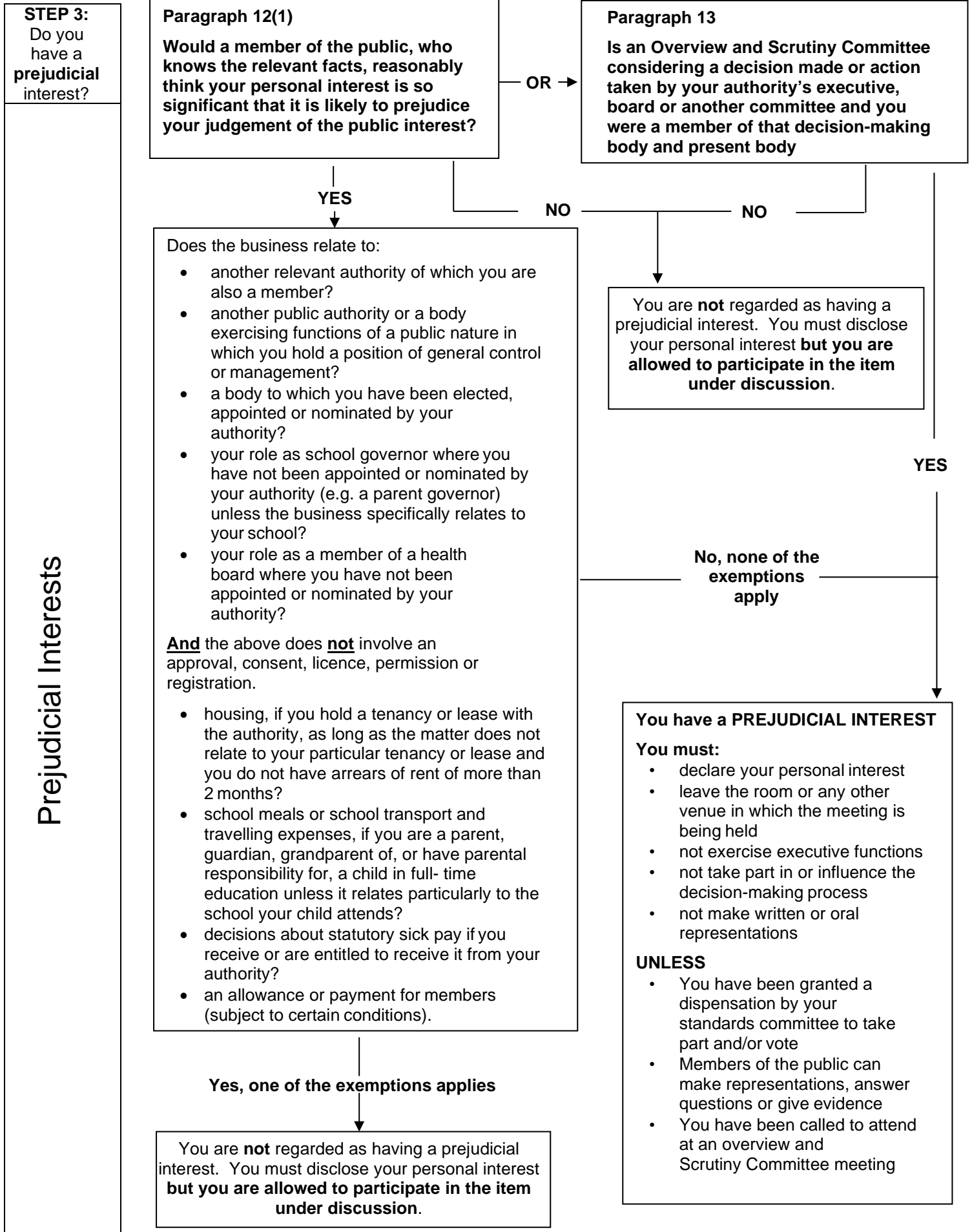
The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation 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.

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

|   |   |  |
|---|---|--|
| <p><b>STEP 1</b><br/>Does the Code apply?</p>   | <p><b>Are you:</b></p> <ul style="list-style-type: none"> <li>conducting the business of your authority?</li> <li>acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority?</li> <li>acting as your authority's appointee or nominee on any other body without its own code of conduct?</li> </ul>   |  |
| <p><b>STEP 2</b><br/>Do you have a personal interest?</p>                               | <p>The Code <b>does</b> apply.<br/>Continue to Step 2.</p>  | <p>The Code <b>does not</b> apply.<br/>No further action required.</p>   |
| <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Personal Interests</p> | <p><b>Paragraph 10(2)(a)</b><br/><b>Does the business relate to or is it likely to affect:</b></p> <ol style="list-style-type: none"> <li>your employment or business?</li> <li>your employer, firm or company?</li> <li>any person, other than your authority, who has paid towards your election or expenses as a member?</li> <li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li> <li>any contract that your authority makes with your company or a company in which you hold shares? (as described in 4)</li> <li>any land in which you have an interest?</li> <li>any land let by your authority to your company? (as described in 4)</li> <li>any body to which you have been elected or appointed by your authority?</li> <li>any:             <ul style="list-style-type: none"> <li>public authority or body exercising functions of a public nature?</li> <li>company, industrial and provident society, charity or body directed to charitable purposes?</li> <li>body whose main role is influencing public opinion or policy?</li> <li>trade union or professional association?</li> <li>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? or</li> </ul> </li> <li>any land in your authority's area which you have a license to occupy for at least 28 days?</li> </ol> | <p><b>Paragraph 10(2)(c)</b><br/><b>Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area):</b></p> <ul style="list-style-type: none"> <li>your well-being or financial position?</li> <li>the well-being or financial position of any person who lives with you or with whom you have a close personal association?</li> <li>the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association?</li> <li>any company in which any person who lives with you or with whom you have a close personal association owns shares?</li> <li>any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.</li> </ul> |
|   | <p><b>If YES, you have a PERSONAL INTEREST</b></p> <p><b>You must:</b></p> <ul style="list-style-type: none"> <li>declare your interest and the nature of that interest:             <ul style="list-style-type: none"> <li>at meetings</li> <li>when making written representations</li> <li>when making oral representations (and confirm it in writing within 14 days)</li> <li>consider if you have a prejudicial interest (see Appendix 2)</li> </ul> </li> </ul>  | <p><b>If NO, you do not have a personal interest</b></p> <ul style="list-style-type: none"> <li>If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest</li> <li>Otherwise, <b>no further action is required</b></li> </ul>  |

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



## Contact us

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