

**CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL**

<b>MEETING:</b>	<b>STANDARDS COMMITTEE</b>
<b>DATE:</b>	<b>16 September 2015</b>
<b>TITLE OF REPORT:</b>	<b>Revised Guidance on the Code of conduct</b>
<b>PURPOSE OF THE REPORT:</b>	<b>To Report to the Standards Committee on the Revised Guidance to the Code of Conduct</b>
<b>REPORT BY:</b>	<b>Monitoring Officer</b>
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## **1. INTRODUCTION & BACKGROUND**

- 1.1 Local authorities and community councils in Wales are required to adopt a statutory code of conduct which sets out the behavior expected of members and co-opted members. Such members are required to provide a written undertaking to observe the requirements of their code of conduct during their period of office.
- 1.2 The role of the Public Services Ombudsman for Wales (the Ombudsman) includes providing guidance to members of local authorities and community councils to help them better understand their obligations under the code of conduct and to reflect any legal changes and evolving experience.
- 1.3 Attached at **ENCLOSURES 1 and 2** respectively are the revised Guidance relevant to members and co-opted members of this Council and the revised Guidance for community council members.
- 1.4 This is the third version of the Guidance/s published by the Ombudsman and replaces previous versions.
- 1.5 At **ENCLOSURE 3** is a copy of the letter sent by the Ombudsman to all community councils, via their clerk, drawing attention to the new Guidance.
- 1.6 The Monitoring Officer wrote to all members and co-opted members of this Council on the 6<sup>th</sup> of July 2015 bringing the new Guidance to their attention.

## **2. SIGNIFICANCE OF THE GUIDANCE**

In deciding whether to investigate an allegation of a breach of the code, or to continue with an ongoing investigation, or to refer an investigation to a local standards committee or to the Adjudication Panel for Wales (i.e. effectively the national standards committee) the Ombudsman will have regard to the relevant information contained within his Guidance.

In addition, the Guidance helps members to understand the level of conduct and behavior expected of them under the code and provides for a measure of fairness and consistency for all members across all relevant bodies.

### **3. SUMMARY OF CHANGES**

The following is a summary of the changes arising from the new Guidance:-

#### **3.1 THE INVESTIGATION TEST**

Initially, the Ombudsman will expect a complainant to be able to provide direct evidence (first hand) of a breach of the code. The level of proof required is on the balance of probability. If the evidential test is met then the Ombudsman will go on to consider whether or not the matter requires investigation. In doing this he will apply the public interest test and his Guidance outlines the factors he will take into consideration. This is not an exhaustive list and every case will be fact sensitive. The following factors are included:

- The seriousness of the breach;
- Whether the member deliberately sought to secure a personal advantage for themselves (or their associates) at public expense;
- Was there a misuse of a position of trust or authority;
- What, if any, harm was caused to a third party;
- Was the breach motivated by discrimination;
- Is there any evidence of previous similar behaviour by the member;
- Is an investigation required in order to maintain public confidence in elected members;
- Is investigation a proportionate response (i.e. is it more likely or not to lead to a sanction)

The Ombudsman has a wide statutory discretion as to whether to begin, or to continue, an investigation. The revised Guidance will provide greater clarity and consistency on how he will exercise that discretion in the decisions which he reaches.

#### **3.2 PUBLIC HEARINGS**

For the first time the Ombudsman confirms that there is now a presumption that all standards committee hearings will be conducted in public. However, it should be noted that this is a presumption only. The Access to Information Regulations still apply to standards committees, in the same way as they do to other committees of the Council, and there may still sometimes be personal data about third parties, or other protected information, which justifies excluding the press and public. Such a decision will be taken by the Standards Committee as a preliminary issue and following receipt of advice. Again, every case is fact sensitive.

#### **3.3 SOCIAL MEDIA**

Given the increasing number of complaints regarding the content of some postings on social media, the Ombudsman has made it clear that if a member is referring to themselves as a “councillor” then the code of conduct will apply. In fact, he has gone further and clarified that if any comments made by a member, on social media, which do

not refer to themselves as “councillor”, but where the content of a posting or postings is related to their role as a councillor, then paragraph 6 (1) (a) of the Code will apply i.e. comments which bring the role of member, or the Council, into disrepute.

The Ombudsman recommends that members have due regard to a document produced by the WLGA entitled ‘Social Media: A Guide for Councillors’. This is available on the WLGA website at <http://www.wlga.gov.uk/social-media-a-guide-for-councillors> or by telephone from the WLGA on 029 2046 8600. The Council also has a Policy which may be found at <http://www.anglesey.gov.uk/council-and-democracy/councillors-democracy-and-elections/constitution/constitution-part-5-codes-and-protocols/constitution-510-protocol-on-social-media/>. Copies are attached at **ENCLOSURES 4**.

### **3.4 THE CALVER DECISION**

Following the decision of the High Court in Calver <http://apw.gov.wales/decision/appeals-decisions/appeals-decisions-apr11-mar12/cllr-m-calver/?lang=en> the Guidance has now been amended to reinforce the point that political freedom of speech enjoys enhanced protection under Article 10 of the ECHR.

The Guidance specifically requires (reflecting the case law) that politicians and senior officers are expected to have a “thicker skin”, but the law provides a greater degree of protection for those outside the category of chief officers and heads of service.

What constitutes political comment has been widely defined. Page 15 of the Guidance sets out examples.

### **3.5 VEXATIOUS COMPLAINTS**

It is clear that the Ombudsman will be taking a more robust approach than his predecessors in dealing with vexatious complaints. He has confirmed in his Guidance that it is increasingly important to him to ensure the effective use of his resources, and that any investigation undertaken is proportionate and required in the wider public interest. This is likely to lead to the majority of vexatious complaints being thrown out at the first hurdle.

Also, for the first time, the Ombudsman makes it clear that if he finds that a member has made a vexatious complaint (i.e. without substance and designed to annoy and irritate) then the Ombudsman may then investigate the complainant’s conduct in making a complaint or complaints which have little or no merit. The Ombudsman has statutory jurisdiction to take this step without receiving a complaint.

### **3.6 PERSONAL AND PREJUDICIAL INTERESTS**

Beginning at page 29 of the Guidance, under “Personal and Prejudicial Interests”, the Ombudsman attaches flowcharts to assist members in carrying out the exercise of determining whether or not they have a personal interest and, if so, whether that interest is also prejudicial. As you know, a member may participate, subject to making a declaration, if they have a personal interest, but are required to leave the meeting and not to speak or vote on the issue if they have a prejudicial interest. This impediment may be overcome by a dispensation from a standards committee.

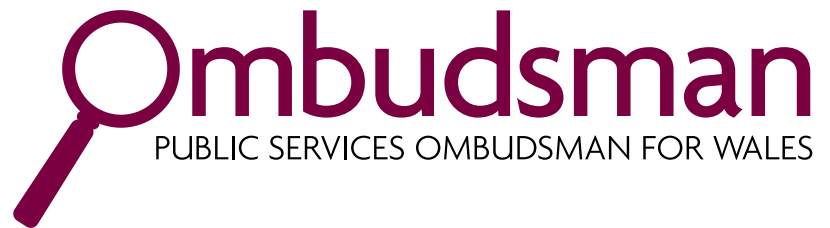
#### **4. RECOMMENDATION**

To note the revised Guidance as published by the Ombudsman.

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ATODIAD / ENCLOSURE

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# The Code of Conduct

for members of local authorities in Wales

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

## Preface

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

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

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

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

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

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



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

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

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



**Nick Bennett**  
**Public Services Ombudsman for Wales**  
**March 2015**

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

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

in Wales.

## **Acknowledgement**

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

Separate guidance is available for members of community councils.

First published April 2010.

This edition published March 2015.

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# 1. Introduction

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

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

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

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

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

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

**Public interest factors include:**

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

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

The process I use for investigating complaints is on my website at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

**Local Resolution Process**

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

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

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

### **Standards Committees**

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

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

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

### **The Adjudication Panel for Wales**

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

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

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

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

## The Principles

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

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

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>1</sup> and are detailed below.

### 1. Selflessness

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

### 2. Honesty

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

### 3. Integrity and Propriety

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

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

#### **4. Duty to Uphold the Law**

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

#### **5. Stewardship**

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

#### **6. Objectivity in Decision-making**

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

#### **7. Equality and Respect**

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

#### **8. Openness**

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

#### **9. Accountability**

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

#### **10. Leadership**

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

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

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



## Deciding when the Code applies to you

### See Paragraphs 2 and 3

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

Consider conduct  
in your public &  
private life

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

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

### When does the Code apply?

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

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

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

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

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

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

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

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### **Example**

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

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### **Example**

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

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

## 2. General obligations under the Code

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

### Equality

#### See Paragraph 4(a)

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

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

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

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

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

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

## Example

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

## Treating others with respect and consideration

### See Paragraph 4(b)

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

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

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

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

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

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

Political comments can attract Article 10 rights

## Example

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

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

## Example

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

## Example

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

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

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

## Bullying and harassment

### See Paragraph 4(c)

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

Consider your conduct from the other person's perspective

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

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

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

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

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

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

### **Example**

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

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

## **Compromising the impartiality of officers of the authority**

### **See Paragraph 4(d)**

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

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

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

### **Example**

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

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

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

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

The member was suspended from office for 12 months

## Disclosing confidential information

### See Paragraph 5(a)

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

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

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

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



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

### **Example**

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

## **Preventing access to information**

### **See Paragraph 5(b)**

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

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

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

### **Example**

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

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

## Disrepute

### See Paragraph 6(1)(a)

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

Any conduct unbecoming of a member can constitute disrepute

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

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

### Example

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

## Reporting breaches of the Code

### See Paragraph 6(1)(c)

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

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

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

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

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

## Vexatious complaints

### **See Paragraph 6(1)(d)**

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

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

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

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

### **Example**

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

## **Co-operating with investigations**

### **See Paragraph 6(2)**

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

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

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

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

## Using your position improperly

### See Paragraph 7(a)

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

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

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

### Example

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

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

## The authority's resources

### See Paragraph 7(b)

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

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

## Using resources for proper purposes only

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

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

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

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

### **Example**

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

### **Example**

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

## **Reaching decisions objectively**

### **See Paragraph 8(a)**

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

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

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

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

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

## Considering advice provided to you and giving reasons

### See Paragraph 8(b)

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

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

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

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

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



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

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

### **Example**

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

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

## **Expenses**

### **See Paragraph 9(a)**

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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**

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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)**

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

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

### 3. Personal and prejudicial interests

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

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

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

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

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

Guidance on registering interests is at Section 4.

#### Personal Interests

##### See Paragraph 10

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

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

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

## Do I have a personal interest?

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

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

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

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

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

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

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

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

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### **Example**

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

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### **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.

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### **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?**

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

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

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

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

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

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

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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**

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

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

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

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

### **Example**

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

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

### **What if I am not aware of my personal interest?**

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

## What to do when you have a personal interest

### See Paragraph 11

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

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

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

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

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

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

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



## Prejudicial Interests

### See Paragraph 12

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#### Do I have a prejudicial interest?

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

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

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

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

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

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

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

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

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

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

**It does not matter whether it actually would or not.**

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

## Does the matter fall within one of the exemptions?

### See Paragraph 12(2)

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

The business relates to:

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

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

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

## Example

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

## Example

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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.**

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

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

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

## What to do when you have a prejudicial interest

### See Paragraph 14

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

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

### Key point:

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

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

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

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

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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?

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

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

You must declare your interest and withdraw from the room

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

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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?**

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

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

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

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

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

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

## **Executive or cabinet roles**

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

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

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

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

## Dispensations

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

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

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

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

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

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

## 4. Registration of Interests

### Key points:

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

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

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

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

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



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

## Sensitive information

### Key points:

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

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

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

## Gifts and hospitality

### Key points:

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

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

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

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

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

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

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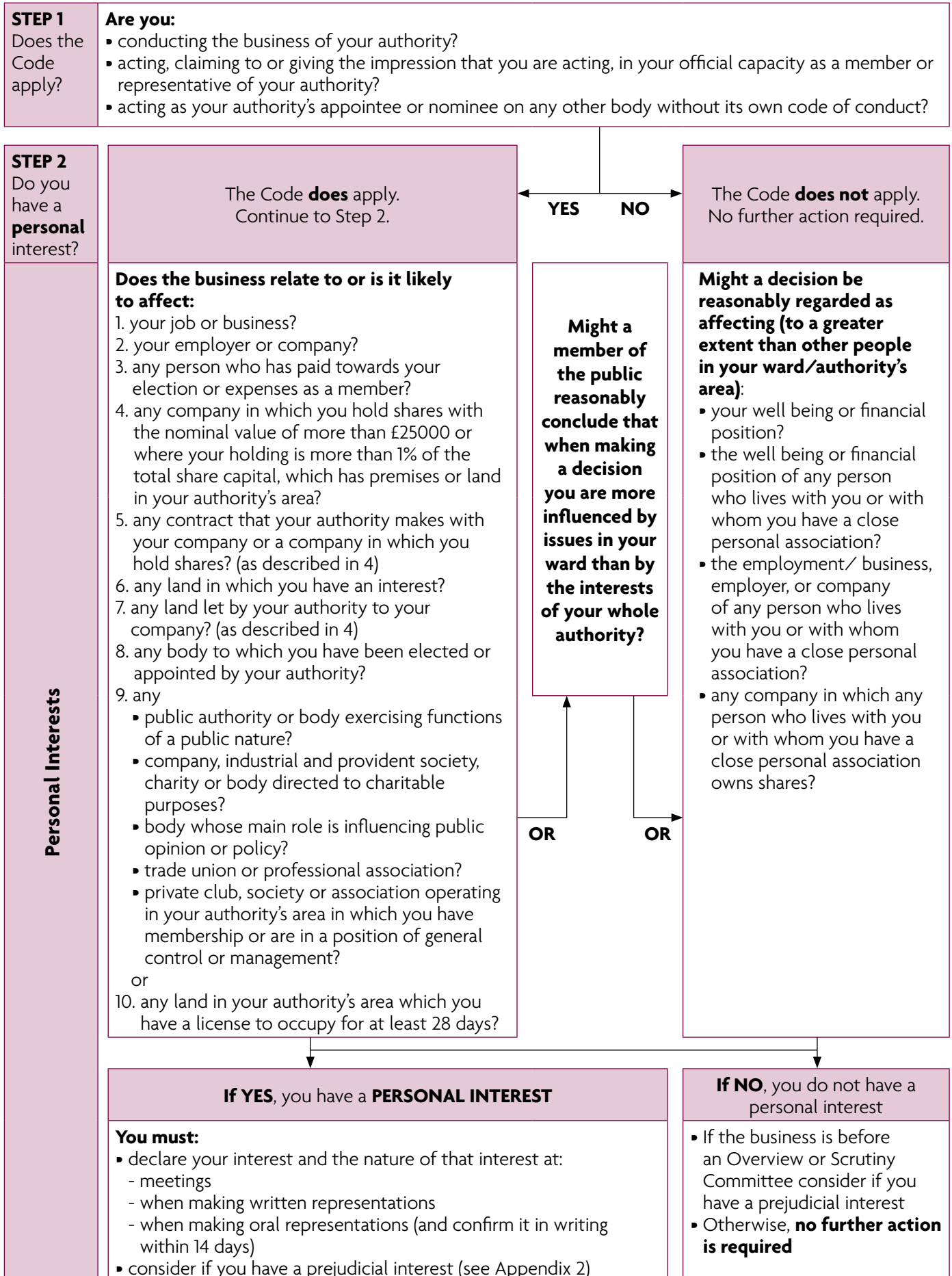
The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation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

# Appendix 1

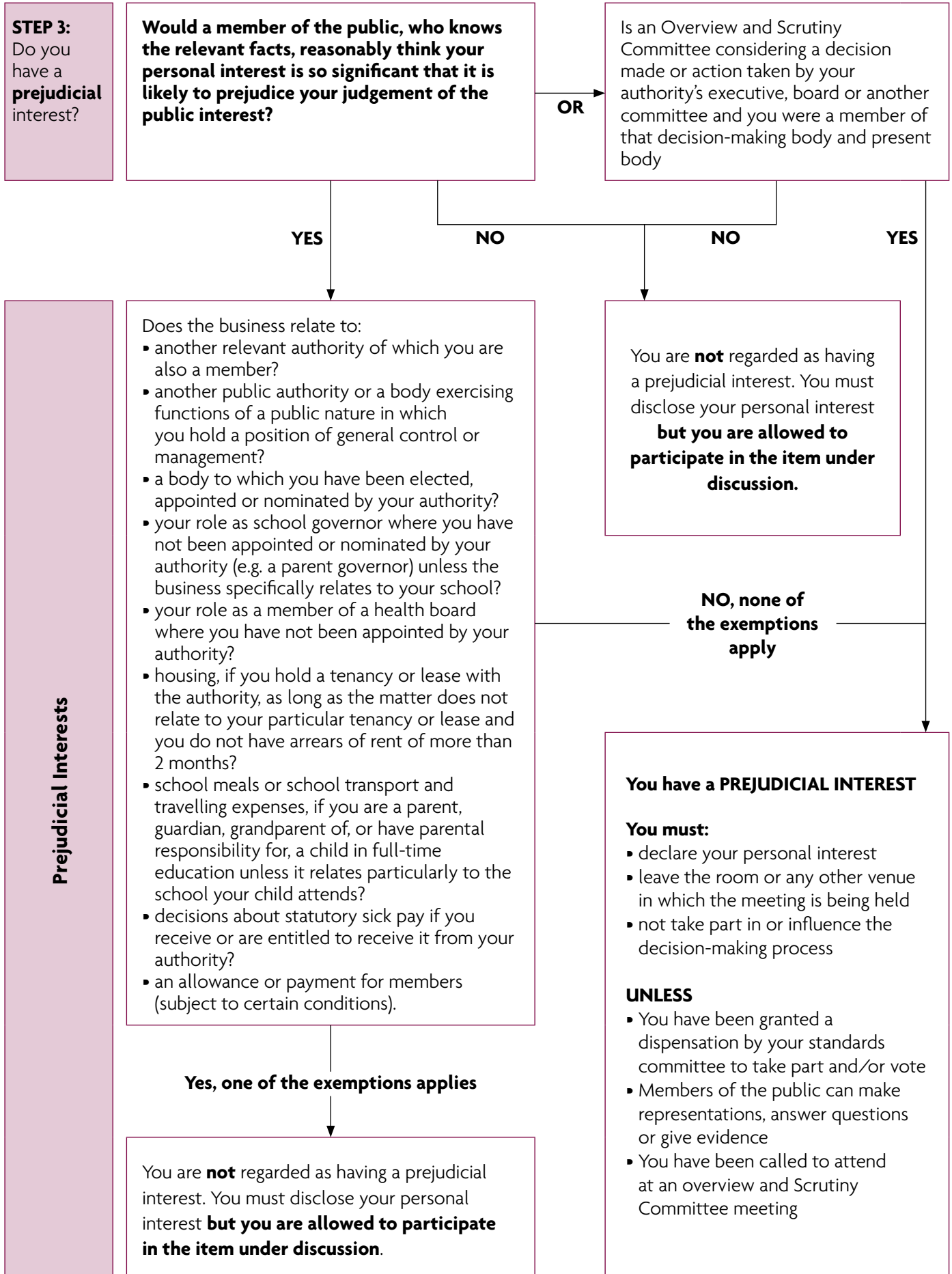
## Personal Interests

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



## Prejudicial Interests

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



Prejudicial Interests

**Public Services Ombudsman for Wales**  
**1 Ffordd yr Hen Gae**  
**Pencoed**  
**CF35 5LJ**

**Tel: 01656 641150**

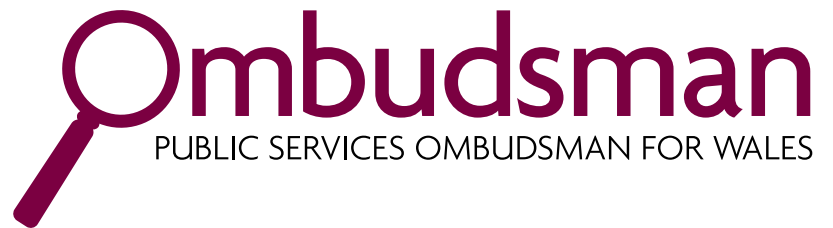
**Fax: 01656 641199**

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**Web: [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)**

ATODIAD / ENCLOSURE  
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ATODIAD / ENCLOSURE  
2



# **The Code of Conduct** for members of local authorities in Wales

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



## Preface

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

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

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

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

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

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

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

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



**Nick Bennett**  
**Public Services Ombudsman for Wales**  
**March 2015**

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

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

## **Acknowledgement**

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

First published April 2010.

This edition published March 2015.

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# 1. Introduction

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

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

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

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

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

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

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

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

**Public interest factors include:**

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

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

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

**Local Resolution Process**

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

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

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

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

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## **Standards Committees**

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

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

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

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## **The Adjudication Panel for Wales**

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

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

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

### **The Role of the Clerk**

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

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

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

### **The Role of the Monitoring Officer**

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

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



# The Principles

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

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

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>1</sup> and are detailed below.

## 1. Selflessness

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

## 2. Honesty

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

## 3. Integrity and Propriety

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

## 4. Duty to Uphold the Law

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

## 5. Stewardship

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

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

## **6. Objectivity in Decision-making**

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

## **7. Equality and Respect**

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

## **8. Openness**

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

## **9. Accountability**

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

## **10. Leadership**

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

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

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

## Deciding when the Code applies to you

### See Paragraphs 2 and 3

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

Consider conduct  
in your public &  
private life

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

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

### When does the Code apply?

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

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

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

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

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

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

### **Example**

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

### **Example**

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

## 2. General obligations under the Code

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

### Equality

#### See Paragraph 4(a)

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

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

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

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

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

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

## Example

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

## Treating others with respect and consideration

### See Paragraph 4(b)

You must show respect and consideration for others.

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

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

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

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

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

Political comments can attract Article 10 rights

## Example

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

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

## Example

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

## Example

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

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

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

## Bullying and harassment

### See Paragraph 4(c)

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

Consider your conduct from the other person's perspective

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

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

### Example

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

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



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

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

### **Example**

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

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

## **Compromising the impartiality of officers of the authority**

### **See Paragraph 4(d)**

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

## Hypothetical Scenario

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

## Disclosing confidential information

### See Paragraph 5(a)

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

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

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

### Example

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

## Preventing access to information

### See Paragraph 5(b)

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

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

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

### Example

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

## Disrepute

### See Paragraph 6(1)(a)

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

Any conduct unbecoming of a member can constitute disrepute

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

### Example

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

### Example

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

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

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

## Reporting breaches of the Code

### See Paragraph 6(1)(c)

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

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

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

## Vexatious complaints

### See Paragraph 6(1)(d)

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

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

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

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

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

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

## Co-operating with investigations

### **See Paragraph 6(2)**

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

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

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

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

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

## Using your position improperly

### See Paragraph 7(a)

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

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

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

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

### Example

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Councillor D was a 'joint co-ordinator' of a community group. Councillor D did not notify the Council of her position in this group. She took part in the considerations and voted on the decision to negotiate a new lease in respect of a workshop used by this community group. A standards committee found that she had used her position on the Council improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not made the Council aware of. She was found in breach of paragraph 7(a) of the Code and suspended from acting as a councillor for four weeks.

## The authority's resources

### See Paragraph 7(b)

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

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

## Using resources for proper purposes only

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

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

### Example

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



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

## Reaching decisions objectively

### See Paragraph 8(a)

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

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

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

## Considering advice provided to you and giving reasons

### See Paragraph 8(b)

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

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

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

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

## Expenses

### **See Paragraph 9(a)**

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

## Gifts and hospitality

### **See Paragraph 9(b)**

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

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

### 3. Personal and prejudicial interests

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

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

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

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

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

Guidance on registering interests is at Section 4.

#### Personal Interests

##### See Paragraph 10

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

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

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

## **Do I have a personal interest?**

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

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

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

## **Matters affecting your well being or financial position**

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

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

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

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

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

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

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

## Who is a close personal associate?

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

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

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

## “Twin hatted” members

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

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

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

### **Example**

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

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

### **What if I am not aware of my personal interest?**

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

## What to do when you have a personal interest

### See Paragraph 11

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

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

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

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

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

## Prejudicial Interests

### See Paragraph 12

#### Do I have a prejudicial interest?

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

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

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

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

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

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

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

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

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

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



## What to do when you have a prejudicial interest

### See Paragraph 14

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

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

### Key point:

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

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

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

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

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

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

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

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

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

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

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

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

## **Example**

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

## **Dispensations**

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

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

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

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

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

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

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

## 4. Registration of Interests

### Gifts and hospitality

#### Key points:

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

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

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

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

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

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

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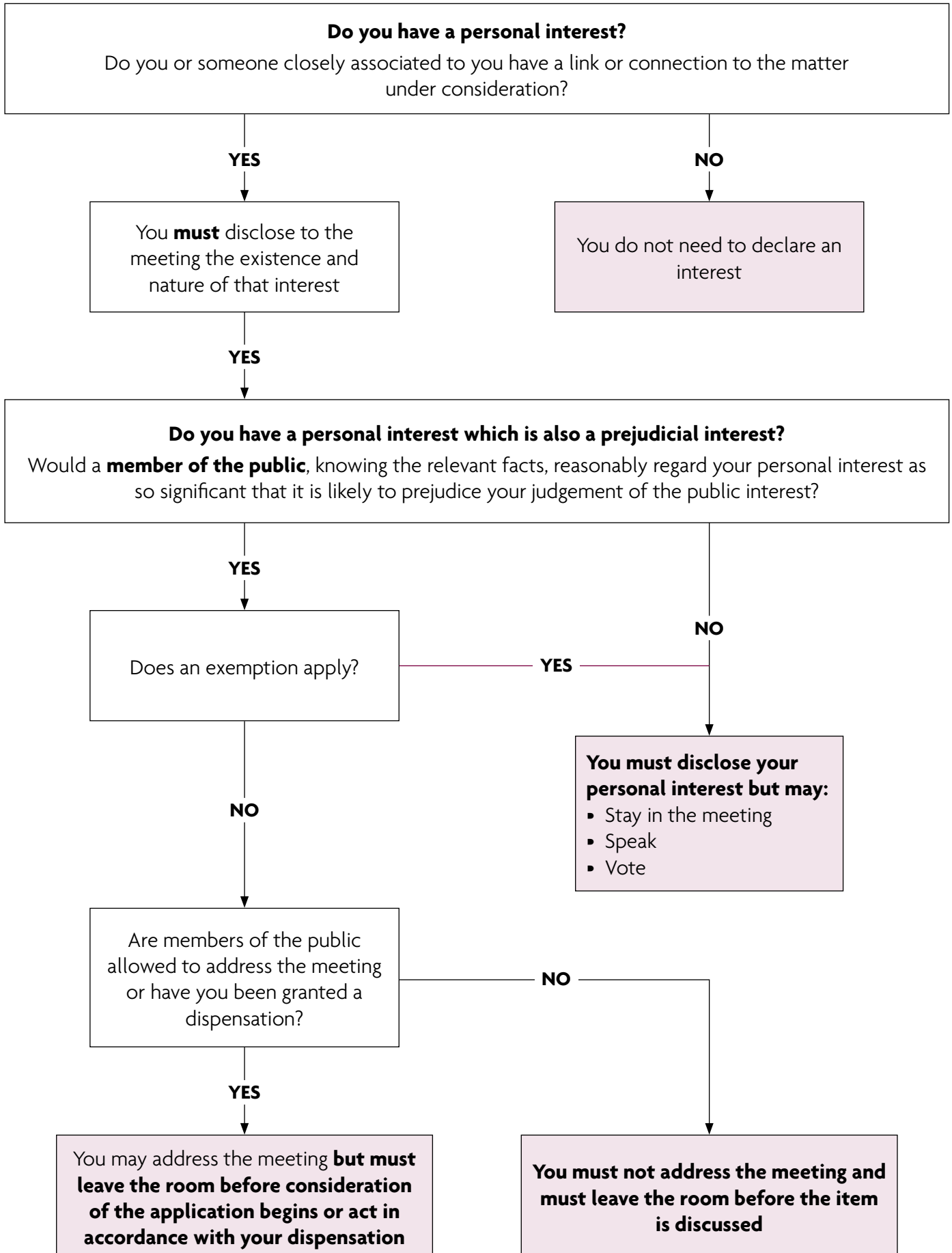
The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

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

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

## Declaration of personal and prejudicial interests

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



**Public Services Ombudsman for Wales**  
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ATODIAD / ENCLOSURE  
3

ATODIAD / ENCLOSURE  
3



TO Town/Community Council

Dear [Clerk]

I am pleased to confirm that I have issued revised Guidance on the Code of Conduct for members. Since taking up my office I have become increasingly concerned about the number of low level complaints that I am receiving from community and town council members. In view of this, I have revised the two stage test that I use when deciding whether to investigate a complaint that the Code has been breached or to continue with an investigation to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales, to include consideration of any public interest factors that may apply to a case. This is to ensure that I continue to investigate serious complaints to maintain public confidence in standards of public life. Further information about the revised test and the public interest factors that I may apply is included in Section 1 of the revised Guidance. Other changes include further guidance on the use of social media and political expression and a flowchart which has been designed to provide members with assistance and clarity on the issue of interests.

No hard copies of the Guidance will be produced. However, copies can be downloaded from my website at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk) There is a separate version available for town and community councillors. I would appreciate it if you could bring this to the attention of your members so that they can familiarise themselves with the changes that I have made. I hope that the Guidance will continue to be a useful resource to both you and the members when considering their obligations under the Code.

Yours sincerely

Nick Bennett  
Ombudsman

ATODIAD / ENCLOSURE

4



# **Social Media: A Guide for Councillors**

August 2013

# Contact

## Welsh Local Government Association

The WLGA's primary purposes are to promote a better local government, its reputation and to support authorities in the development of policies and priorities which will improve public service and democracy.

It represents the 22 local authorities in Wales with the 3 fire and rescue authorities and 3 national park authorities as associate members.

### Welsh Local Government Association

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*We are indebted to the officers and members who have contributed to this guide, particularly the members participating in the WLGA training for members in social media, the member support officer network, LLG and monitoring officers and SOCITIM. Also to Kevin O'Keefe from EXCELA INTERIM MANAGEMENT & CONSULTANCY LTD [www.excela.co.uk](http://www.excela.co.uk) who has contributed to the guide and delivered the training programme.*

*Due to the rapid developments in this area this guide will be regularly updated. Suggestions for inclusion are welcomed and further training for members is available from the WLGA. Contact Sarah Titcombe Organisational and Personal development Adviser - 029 2046 8638 [sarah.titcombe@wlga.gov.uk](mailto:sarah.titcombe@wlga.gov.uk)*

## Foreword

I'm delighted to present this useful guidance on social media which gives councillors a clear idea about what these tools are and how we can use them. There are some great ideas to help us think about how we make the most of these effective and cheap forms of communication.

Social media has changed the way we work in Monmouthshire. All of our employees and members have permission to use social media at any time so that they can make the most of what channels like Twitter and Facebook offer.  
<http://acedigitalcomms.wordpress.com/2013/05/29/unrestricted-staff-access-to-social-media-access-a-roundup/>

In short, they're an easy way to talk and to listen to our residents, local businesses and other partner organisations. Without access to these tools we would be a weaker organisation as we would not hear what people in our communities care about, what they want to get involved with and what they think of their council.

Social media has given us a chance to be creative and try new things. Our foster carers in Monmouthshire use Yammer to stay connected and learn from each other.

<http://monmouthshirecc.wordpress.com/2012/03/12/rewind-story-fostering-communication-using-yammer/>

We use YouTube for our budget consultations.

<http://digitalmon.wordpress.com/2013/01/13/youtubing-a-budget-consultation-and-how-a-great-blogger-helped-us-get-better/>

We even recruited our current head of children's services using YouTube, Twitter and LinkedIn.

<http://acedigitalcomms.wordpress.com/2011/07/11/social-care-recruiting-using-social-media-how-monmouthshire-council-is-recruiting-a-head-of-childrens-services-using-youtube/>

I use Twitter and my blog to connect with residents, other councillors and farmers and people who share my interests. I really see the value of this form of communicating – social media is now a legitimate business tool.

<http://digitalmon.wordpress.com/2013/01/12/councillor-peter-fox-leader-of-the-council-talking-about-social-media/>

I hope you enjoy this very informative guide.



### **Councillor Peter Fox**

Leader Monmouthshire County Council  
WLGA Spokesperson for ICT and Digital Inclusion

## Introduction

A revolution is taking place in how we communicate. The world is experiencing the biggest ever change in how information is created and owned, as well as the speed in which it can be shared. This is changing the way we live, work and even how we speak and think.

This guide is for Councillors who would like to use social media as a tool to share information, open new dialogues with the people in their community and beyond, and engage their electorate in productive two-way conversation.

We live in an open, accessible and dynamic communications world. The use of social media will help ensure your voice is heard.

### 1. What is social media?

Social media is a blanket term applied to a range of online multimedia tools that are used for creating content and two-way communication. They can be accessed via your smartphone, PC, laptop, tablet or smart TV. All social media accounts are free of charge and can be set up quickly and easily from an Internet page. Although this guide will focus on Facebook and Twitter, some useful examples of social media include:

**Blogs** which are like an online diary journal where you can share information. Examples are Wordpress, Blogger, SimpleSite. Here is an example of a

typical member's blog -

<http://hughevans.wordpress.com/>

#### Top tip:

Share your thoughts and activities, and comment on the issues that mean the most to you. Maintaining a regular blog could make compiling your annual report all the easier.

**Micro blogs** allow users to share shorter pieces of information. **Twitter** is an example of a micro-blog. Short messages which you post on Twitter are called "Tweets" – they are each limited to 140 characters (letters, numbers and spaces). Tweets are not a private means of communication and can be seen by anyone who is "following" you. Twitter also has a message facility where you can send messages directly to other Twitter users. However, all such personally directed messages can also be viewed by all of your other followers. You can even forward other Twitter users' Tweets to your own followers, by using the Re-Tweet function.

Tweeting is a good way of promoting local events, live tweeting @council meetings and to give links to longer posts. #Jaynecowan

#### Top tip:

Follow and be followed. Twitter is a great tool for finding out what is happening, what people think of local and global issues. Listen first and then simply join in the conversation.

**Social Networks** such as *Facebook* are like having your own small website which can include pictures and text and can provide information and photos. Typically these sites allow you to update people on what you are doing or thinking through a 'status' update and allow you to talk about who you are, what's important to you, what you have done and your plans. You can invite people to be your 'friends' and also set different levels of access to your account, so some people can see all the information about you or you can make less detail available to others. You can also use Facebook to communicate with groups or individuals. People who find your page, comments or proposals of interest can "like" you, which encourages further use, and is a useful way of taking a straw poll of your ideas.

**Linked-IN** is a professional equivalent of Facebook. You can provide information about your career history and skills, and people with whom you are "linked" can endorse you for particular skills. This is a handy site for finding expertise and keeping up-to-date with business developments in your ward or area.

**Flickr, Vimeo, Instagram** and **You Tube** are examples of platforms for sharing videos and photographs. Don't forget to seek permission before taking photos to upload to, or copying images from these sites. **Snapchat** is a photo messaging application for photo, video, drawing and text.

**Communities of Practice** are a way of like minded people joining a community where they can share knowledge and discuss issues relevant to the Community for example the LGA Knowledge Hub.

## 2. Why Should You Use Social Media?

Social media will allow you to open new conversations with the people you represent, and the potential for councillors using social media is huge. Your Council will already have official accounts on Twitter and many also have Facebook accounts. Scrutiny Committees may also be using social media to undertake service reviews.

### So what are the benefits to councillors of using social media?

- Increasing numbers of people are using Twitter and Facebook, as their preferred method of communication. If you have a presence on these platforms you have the potential to establish two- way communication with all of them.
- It's a useful way of finding out what people are talking about locally, their concerns and interests.
- It's useful for finding out about breaking news, the latest research or publication or the latest policy announcements from political parties.
- It's a good way of making the electorate more aware of the work you do personally.

- It's an effective way of coordinating campaigns for example, allowing campaign workers access to your Facebook account.
- Social media allows you to have a conversation with a range of people that you would never be able to physically meet and who do not traditionally seek out their local representatives.
- Social media allows for immediate communication. You can pass on information and receive opinions in minutes. You can forward information from other people equally quickly. "Going Viral" is not necessarily a bad thing, and refers to a mass spreading of a piece of information around the world.
- The local and sometimes national press will follow councillors' on Twitter or Facebook. This means that they know what you are talking about the minute you talk about it.
- Social media is mobile. You can take it around your community, on the train, to a coffee shop or coffee morning or even in bed.
- You can upload pictures and videos, showing for example your role in local events, pictures of potential sites for development, new buildings, local eyesores - a picture tells a thousand words.
- It's free, accounts cost nothing, you probably already have the equipment you need. All you need is time.
- You can receive immediate feedback on your ideas and manifesto to allow

you to modify your proposals in line with local thinking.

- Above all, it can be a lot of fun!

### 3. How to Use Social Media effectively

Choose your medium and sign up. This is very straightforward and will take you less than five minutes!

Facebook and Twitter are good places to start. You might want to begin with a trial personal account (rather than calling yourself "Councillor Jones") and experiment with family and friends. Make sure that you understand how people find you and who can access your material.

Remember:

- On Facebook you can control who has access to different parts of your account. You can manage what the world sees and what your "friends" see.
- On Twitter the whole world can see everything you Tweet. Even the messages that you Tweet directly to other people can be viewed by anyone unless you have locked down your account to followers.
- When you are ready to set up your final account, consider the identity you use. The name you give yourself online is important as it allows people to find you. Prefacing your Twitter account with Cllr lets people know exactly who you are and indicates that the Code of Conduct will apply.



- You might want to consider setting up a separate personal and “professional” account - you can talk about the amazing food in the restaurant around the corner to your friends and followers in your informal account, and the plans for the new bypass to your friends and followers on your professional account. However, many councillors think that some of their personal comments about food, places they've visited, football matches or TV helps break down perceptions of councillors and proves that they are normal like everyone else!

*I use Twitter to speak with residents and engage more broadly. Also to twitter on about books, music, trains and ale, Almost human!*

@LukeOHolland (Cardiff Councillor)

- Make it easy for people to find you online. Many people will start their search for the area that you represent, so make sure you mention your location frequently as that this will then be picked up by search engines. You will also want to make sure that your social media account details are on your business cards, posters and flyers.
- On Twitter, sign up to Tweety Hall and other sites where councillors can be found by their electorate.
- Increase your web presence by linking to other people and sites, leave comments on others' posts

and encourage others to link with you. The more you are mentioned, the more people will find you.

- Choose your friends on Facebook and who you would like to follow on Twitter. Bear in mind that people know who follows them and will often follow you in return. Find people on Twitter with links to your community, county or region by searching using the 'hashtag' (#) symbol to prefix your search-term for example #Reynoldston, #Gower, #Swansea, #South West Wales, #Wales.
- Be disciplined about making time available to write new content and answer your “friends” and “followers”; a regular time each week to update your Facebook status and throughout the day to check Twitter.
- Decide on what you are going to talk about and how. This could be
  - Weekly updates of your own activities as a councillor - don't forget your pictures! This works better on Facebook as you can include more detail. Remember Twitter is only 140 characters and tends to be more instant and timely.
  - Regular updates on council policies and actions of interest to your community.
  - Links and re-tweets of other relevant national activities.
  - Issues on which you would like feedback.

- Notice of events and public meetings.

**Remember** using social media is all about two-way communication, it's good for providing information to your community or flagging up press statements, but it's better as a tool to get useful feedback. You **will** get feedback and you should expect some people to challenge your ideas or enter into a debate with you online. This is part and parcel of social media.

#### 4. Etiquette and style

- Keep your communications clear, positive, polite and professional. Plain language helps. Many people use abbreviations on Twitter – you'll pick these up as you go along!
- Avoid being ironic or sarcastic, it can be misinterpreted.
- On Facebook, you will need to monitor and, if necessary, censor the contributions that other people make to your site; delete them if they do not match your required standards of behaviour or language. Defamatory and offensive language will be attributed to the publisher as well as the original author and could incur financial liability. It is up to you to decide if you want to remove posts that disagree with your political position, however if you do remove them you may be accused or censoring contributions on political grounds.

- On Twitter, you can block people who are habitually offensive or vexatious. Remember however, blocking them only stops them engaging directly with you, their tweets will continue to be public to all of their followers.
- Bear in mind that constituents may find party political point scoring tedious and prefer to hear information about what you are achieving.
- If you don't have anything to say...don't say anything. Even though it's tempting to let your followers know how busy you are they will soon become bored with constant updates on your day without some relevant or interesting information.

#### 5. Support from the Council

Councillors are generally provided with the ICT equipment that they need to do their job. The Independent Remuneration Panel expects that this will include ICT equipment, support and training.

It is also reasonable to expect that you should also have access to social media sites to enable you to carry out your councillor role more effectively. You do not need the council to set you up with a personal social media account but you should take advantage of any training or guidance provided to help you use it properly.

Most councils have a social media policy. You will need to abide by this and any social media protocols that may have

been agreed when using your “councillor” account.

It’s worth remembering that the council is responsible for any information provided on its website and is subject to legal responsibilities. **You** are personally responsible for the material that you broadcast via your own social media accounts or websites – but more of this later.

Advice will be available to you from a number of council officers. The Monitoring Officer, Head of Democratic Services, the Communications Team and the ICT Manager are likely to have useful advice.

## 6. Social Media and Council Meetings

Recently, especially with the advent of webcasting there has been an increase in interest in the use of Twitter in council meetings. Clearly you will need to be guided by your council’s constitution. Other than what your constitution or social media policy says, there is no legal reason why you shouldn’t use social media from meetings. However, some common sense does need to apply.

- Tweeting on meeting progress and receiving comments from the community can be helpful for transparency and engagement BUT excessive use of Twitter may give people the impression that you are not concentrating on the business in

hand or are even relying on guidance from outside the meeting. For that reason, it is probably sensible not to use Twitter during a planning or licensing debate. Committee chairs may want to decide how to address this in their meetings and you should abide by the rules set out in your constitution.

- Remember, you may not need to tweet about the detail of a meeting - some councils are introducing new arrangements for webcasting meetings and many also have “official” twitter feeds for live on-line conversations to run alongside the meetings.
- If your council webcasts your meetings, this provides a useful way of the public viewing what is happening at first hand and ensures that any video recordings are accurate. Filming meetings informally, whether this is done by councillors or the public may cause difficulties and is usually covered by the Constitution. It may provide a distraction to the proceedings and, if an edited version of events appears on You Tube it might create a false impression.
- Remember that you should not tweet or communicate in any way the content of exempt or confidential business dealt with by local authorities in closed session such as when making formal appointments.

## 7. The Welsh Language

You can use social media in the language of your choice; you do not have to translate your personal Tweets or Facebook accounts.

Councils' social media streams might however be available either separately in Welsh and English or bilingually. The Welsh Language Commissioner feels that there is no need for social media streams to be bilingual as the two separate streams will be accessed by, and sufficient for different communities.<sup>1</sup>

Make sure that you are aware of your Council's rules on the use of the Welsh language set out in your Welsh Language Scheme.

## 8. Golden rules

Think before you tweet or post on Facebook. Do not say anything, post views or opinions that you would not be prepared to:

- Discuss face to face with the person you are speaking about.
- Write on a placard and carry down your high street and discuss and defend with anyone who sees it.
- Be prepared to have minuted in a public meeting – remember, Twitter or Facebook effectively publicly

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<sup>1</sup> <http://www.participationcymru.org.uk/home/all-wales-public-service-organisations-internet-and-social-media-survey>

minutes everything for you as you go along!

Remember that once you have said something it may be seen by millions - friends, supporters, political opponents and the press and could be re-tweeted around the world in minutes.

Keep your messages professional, polite and positive.

Remember to try to keep tweets and texts separate – many people tweet comments that they would previously have texted someone privately; this may be about meeting up later (do you want all your followers knowing your plans and gatecrashing your lunch!?) through to 'in' jokes that could be misinterpreted. Don't follow an individual unless you know them or have a good reason for doing so. Some people, such as constituents or council employees, might find it a bit uncomfortable to have their local councillor hanging on their every word.

If you make a mistake admit it. Mistakes happen so don't try to cover it up as there will always be a record of what you've said.

Don't enter into unhelpful online arguments; remember all of your followers or friends will be witnessing this online. Ignore people or block them if they persist in vexatious comments.

Don't tweet or post on Facebook when you are "tired" it's probably sensible to

turn off your phone at any time when you think your judgement may be impaired. Bear in mind that it is possible for your followers and friends to be seen. If you follow or are Facebook “friends” with council employees, contractors who have been procured to provide services to the council, a company or member of the public making a planning application or pressure groups, this *might* be construed as having a close personal association with them and therefore a personal interest.

As with your own leaflets or newsletters, always ask permission before taking a picture that you intend to use. NEVER take photos of children without the express permission of their parents based on an understanding of what you intend to use the picture for. Your council will have a policy on taking pictures of children, take advice on this before taking or using pictures.

Do not allow anyone else access to your social media accounts, protect your passwords, especially if you use a public computer.

Just like email, you can get spam in social media! Be wary about direct messages via Twitter, even from people you know, with messages such as ‘Hi, have you seen this photo of you on Twitter?’ Delete these before opening, as the spam could then be sent to all of the people you are following...

## 9. Possible Pitfalls and How to Avoid Them

### Time and Commitment

Maintaining your social media accounts can take time. Many people start enthusiastically and then allow their accounts to lie fallow. This is risky as friends and followers may think that you are inactive or, worse, unresponsive.

To avoid this:

- Only set up accounts that you can manage, choose either Twitter or Facebook if necessary. It is possible to set up links between the two which will save you duplicating information.
- Set time aside regularly for updates and get used to communicating ‘on the hoof’.

### The Law

Councillors new to social media tend to be concerned about the legal implications. It is an important consideration, and some councillors and other politicians have fallen foul of the law, but with careful use and following some ground-rules you will be fine!

The style of communication employed in the social media environment tends to be fast and informal. Messages can appear lightweight and transitory.

Whenever you post something on social media, it becomes a publication, you have effectively made a broadcast. As it is now in the public domain, it is subject

to both the **Code of Conduct** and to various **Laws**.

### **Code of Conduct**

If you conduct yourself on twitter or Facebook as you would in person on the street or in your leaflets, then you will be fine.

Remember that according to guidance from the Ombudsman, the Code of Conduct applies to you whenever you are "Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority" Also the Code applies if you "Conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute"<sup>2</sup> If you can be identified as a councillor when you are using social media, either by your account name or how you describe yourself or by what you comment upon and how you comment, the requirements of the Code of Conduct apply. Also if you say something that could be regarded as bringing your office or authority into disrepute the Code applies even if you are not apparently acting in your official capacity or do not identify yourself as a member. Remember that the Ombudsman's guidance states that "Making unfair or inaccurate criticism of your authority in a public arena might

well be regarded as bringing your authority into disrepute"

In the same way that you are required to act in council meetings or in your communities you should:

- **Show respect for others** - do not use social media to be rude or disrespectful
- **Not disclose confidential information about people or the council**
- **Not bully or intimidate others** - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- **Not try to secure a benefit for yourself or a disadvantage for others**
- **Abide by the laws of equality** - do not publish anything that might be seen as racist, sexist, ageist, homophobic or anti faith. Even as a joke or "tongue in cheek"

### **Predetermination**

As a councillor, you are aware that when you act in a quasi-judicial capacity, for example on a planning or licensing committee, you should not make up your mind about an issue that is to be formally decided upon before you had heard all the relevant information. You are allowed to be predisposed to a particular view but not to have gone so far as to have predetermined your position. It is important to remember therefore that

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<sup>2</sup> <http://www.ombudsman-wales.org.uk/en/publications/Guidance-policies.aspx>

anything relevant you might have said about particular issues on social media could be used as evidence of your having made up your mind in advance of hearing all the relevant information.

### **Criminal Offences**

Don't panic! These generally apply to you already in your conduct as a councillor, but it is worth considering them as they apply to social media:

**Harassment** - It is a criminal offence to repeatedly pursue a campaign against someone where this is likely to cause alarm, harassment nuisance or distress.

**Data Protection** - It is illegal to publish personal data about individuals unless they have given you their permission. This might apply to your constituents or service users. As a councillor you are a data controller in your own right and therefore personally responsible for what you publish.

**Incitement** - It is a criminal offence to incite any criminal act.

### **Discrimination and Racially Aggravated Offences (or any other protected**

**Characteristic)** - It is a criminal offence to make a discriminatory remark about anyone based on a "Protected Characteristic" as defined in The Equality Act ( such as their race, religion, sexual orientation etc).

### **Malicious & Obscene**

**Communications** - It is a criminal offence to send malicious or obscene communications.

### **Civil Law**

This is where things get more risky for anyone who uses Twitter or Facebook, whether they are councillors, members of the public or celebrities...

**Defamation** - It is against the law to make a false statement about someone which damages their personal or professional reputation. Crucially - even if you simply retweet or pass on information originally posted by others, you may still be held equally as responsible as the original commentator. This can also apply to publishing images. If found liable to another person, you could be ordered to pay large sums of money as damages.

**"High Court: Sally Bercow's Lord McAlpine tweet was libel"**

<http://www.bbc.co.uk/news/world-22652083>

**Copyright** - The legal ownership of the contents of documents, photos, videos and music belong to the person who created them. You could be in breach of copyright if you reproduce such material without the owner's permission. Always ask for written

consent before you use someone else's material.

**Political Comment and Electioneering** - Remember that although it is acceptable to make political points or canvass votes via your own social media accounts this will not be permissible if you are using this via council supplied computer equipment, certainly in the run-up to elections. The Electoral Commission has further information about the return on expenditure that candidates need to provide on advertising or campaign literature.

## 10. Further Information, Interesting Sites and Sources of Help

Bear in mind that information, sites and terminology change quickly. Facebook is already reporting a drop in users. However, the next big social media platform will soon be on its way. Here are some current examples of information and useful sites but bear in mind that they may be quickly out of date.

Sign on to **Twitter** here  
<https://twitter.com/>

Sign up to **Facebook** here  
<https://en-gb.facebook.com/>

**Tweety Hall.** A platform that gathers all the Councillors that have Twitter accounts in the UK

together so that all their posts can be read in one place and the public can easily find their local councillor. All you have to do to join them is send them a Tweet.  
<http://tweetyhall.co.uk/>

### **Twenty-first century councillors**

<http://socialmedia.21st.cc/>  
Useful guidance for members using social media.

<http://kindofdigital.com/>

An online innovation agency helping organisations engage online with citizens, communities and stakeholders. Has useful examples of social media guidance.

**LGA's Knowledge Hub** is an example of a community of practice. This one was set up specifically for people working in and with local government and has online fora, libraries full of materials and details of events.

<https://knowledgehub.local.gov.uk/>

**Social Media and Online Collaboration Community.** Join this Community of the Knowledge Hub to talk to other councillors and officers working with Social Media.



## 11. Glossary

### **Blog**

Term derived from Weblog i.e an internet log or diary

### **Blogosphere**

All the Blogs on the Internet

### **Community of Practice**

Group of people who are members of an online 'club' because they have a role or an interest in an area of work

### **Direct Message**

A message sent via Twitter to someone who follows you or who you follow.

### **Facebook**

An example of social networking

### **Flickr**

Photo sharing site

### **Follower**

Someone who has chosen to follow you on Twitter

### **Friend**

Someone who you have allowed to access your Facebook page. Not necessarily a real friend.

### **Forum**

A virtual discussion area

### **#Hashtag**

A hashtag or # is a way of denoting a keyword which can be used as a search term on Twitter.

### **Instagram**

A platform for sharing photos and videos

### **Instant Messaging**

A conversation with one other person via for example *Microsoft Live Messenger* or *Yahoo Messenger*. A conversation which, if you indicate that you are available for a chat is more immediate than e mail and easier to type than a text

### **Microblog**

Short blog e.g. Twitter using a maximum of 140 characters

### **Pinterest**

A virtual pinboard for creating and sharing images

### **RebelMouse**

A free service that connects to your accounts at services such as Facebook, Twitter and/or Instagram. It integrates all your SM Tweets, postings and blogs automatically into one page, boosting your SM presence without you doing anything extra as it 'runs in the background'. It will save you having to tweet your blogs etc. to get more prominence on search engines.

### **Retweet**

To forward a Tweet received on Twitter

## **RSS feeds or Really Simple Syndication feeds**

Messages from websites informing you that new information is available so that you don't have to keep checking the website for updates

## **Social Bookmarking**

A way of saving and sharing all your favourite sites on the web, for example

*Delicious*

## **Social networking**

Facebook etc

## ***Snapchat***

A photo messaging application for photos, videos, drawings and text

## **Spam**

Electronic junk mail

## **Trending**

Current popular people or conversations as in *trending on Twitter now...*

## **Troll**

Someone who disrupts online communities or discussions through unhelpful or irrelevant posts

## **Tweet**

A message sent on Twitter

## ***Tweety Hall***

A virtual gathering place for councillors with Twitter accounts

## ***Twitter***

An example of microblogging

## ***Vimeo***

A platform for sharing videos and photographs

## **Wiki**

A tool which enables anyone to add or edit content on a website

## ***Wikipedia***

Online Encyclopedia which works using this method and is therefore not always accurate

## ***You Tube***

A platform for sharing videos and photographs

## **5.10 Protocol on Social Media**

### **1. Introduction**

#### **1.1 Definition of social media**

1.1.1 Social media is a collective term used to describe online media which offer easy ways to publish content online and also to facilitate and participate in online conversations, which may invite the posting of comments or contributions or otherwise invite discussion.

1.1.2 Social media can involve social networks (eg. Facebook); professional networks (eg. LinkedIn); content communities sites (eg Flickr and Youtube); blogs (eg. via sites such as Wordpress and Blogger); micro-blogging sites (eg. Twitter). Social media can be accessed by a variety of digital equipment, such as laptops, smart-phones and tablets, which can also be used to capture audio-visual information.

#### **1.2 Scope**

1.2.1 This protocol is intended to set out clearly how Elected Members ought to interact with social media, both as County Councillors and private individuals. The protocol also relates to the use made of social media by members of the public whom attend meetings of the Council, Executive and other committee meetings. It is recognised that the absence of a definitive position statement on the use of social media by Elected Members and the public during meetings has resulted in a degree of uncertainty on the part of Chairs concerning an acceptable response to issues such as the filming of meetings by the public. It is therefore intended that the Protocol provides guidance concerning the permissible use of social media for Chairpersons during meetings.

1.2.2 The Protocol does not relate to Officers of the Council who are covered by separate ICT policies.

1.2.3 The use of social media by Elected Members is covered by part 2.1 of the Protocol. The use of social media by Elected Members during meetings is discussed in 2.1.5.

1.2.4 The use of social media by members of the public during meetings is covered by part 2.2 of the Protocol.

#### **1.3 Background**

1.3.1 Social media can play an important part in the operation of a democratic society by offering positive opportunities for the Council and its Elected Members to engage with the citizens of Anglesey. For example, social media can be an efficient and cost effective way for the Council to keep in touch with residents and businesses. Elected Members can also effectively use social media to interact with constituents and support local democracy. It has been demonstrated that, when used effectively, social

media can engage those who would not otherwise participate in local politics or interact with their Elected Members.

1.3.2 It is apparent that the use of social media also presents the Council and its Elected Members with certain risks and challenges. In particular, the use of social media by Elected Members can potentially result in breaches of the Code of Conduct. Therefore, it is important that Elected Members recognise the risks associated with social media and ensure that they do not use social media in a way which breaches the Code of Conduct.

1.3.3 It is intended that the Council's Standards Committee will have regard to the Protocol when determining allegations of breach of the Code of Conduct involving the use of social media.

## **2 Social Media and the Council**

### **2.1 Use of social media by Elected Members**

2.1.1 It is likely that the use of social media by Elected Members may include participation in Council sponsored media, such as a Leader's Blog; use made in a private, or seemingly private, capacity through a private account; anonymous participation with, or contribution to blogs, forums or other social media sites.

2.1.2 Members are bound by the terms and conditions of the individual social media sites. In addition, Members should recognise that their use of social media could be covered by the Code of Conduct, and it is likely that any failure to comply with the law and user agreements of the sites could constitute a breach of the Code of Conduct. In particular, Members should also avoid using social media in a way which suggests bias and predetermination.

2.1.3 In addition to issues covered by the Code of Conduct, Members are reminded that their use of Social Media can have implications in general law, which for an Elected Member may have serious consequences.

2.1.4 It is suggested that the potential difficulties arising from the use of social media can be avoided if the information published by Members is objective, balanced, informative and accurate. The effects of publishing information online can be long lasting, as access to online published content is pervasive and effectively published in perpetuity.

2.1.5 Members should not use social media during meetings. The restriction extends both to making contemporaneous comments on other individuals or issues and accessing social media during meetings.

2.1.6 In addition, Members should seek to avoid giving others the impression that they are not fully attending to the proceedings of a meeting. This can be done by ensuring that mobile devices are used sparingly and discreetly during meetings.

2.1.7 Members should avoid using mobile devices to send or receive information which is not connected with the matters under consideration in the meeting. Use made of mobile devices to send or receive private messages or email during meetings ought to be reasonable and discreet. Chairs should reprimand any Member whose use of mobile devices during meetings is deemed to be excessive.

2.1.8 The following paragraphs of the Code of Conduct will apply to the use of social media and other online behaviour. The rights of Members under Articles 8 and 10 (Schedule 1) of the Human Rights Act 1998 have been considered.

2.1.8.1 Paragraph 5.4 (a) “carry out your duties and responsibilities 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”;

Members should ensure that their use of social media does not breach the Council’s principles of equality. Discriminatory statements are also likely to be unlawful.

2.1.8.2 Paragraph 5.4 (b) “show respect and consideration for others”

Members should be aware that whilst political comments and the expression of political opinions and arguments are not stifled by the Code of Conduct, it is likely that personal remarks aimed at an individual could be seen as disrespectful and could constitute a breach of the Code.

Members are reminded that their use of social media could result in the libel of another individual. This also applies if a Member with a personal social media site allows any individual to publish libellous content on it.

2.1.8.3 Paragraph 5.4 (c) “not use bullying behaviour or harass any person”

Members should be cautious when making personal comments about individuals and social media should never be used to review and discuss the performance of Council staff. The Council will not tolerate any anonymous use by Members of social media which is deemed to bully or harass any person.

Members who maintain a blog or networking site (such as Twitter) should be aware that the comments of others on those sites could be attributed to the Member by association. Members should ensure that defamatory or obscene comments are removed from their personal sites.

2.1.8.4 Paragraph 5.5 (a) “disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so”

Members should always be certain that information they discuss or disclose on social media sites is not confidential and that it is proper to do so. Members should

remember that information placed on a website, whether anonymously or not, which could only have been obtained by a Member is likely to fall under the Code.

Members should never publish the personal data of individuals on social media sites in breach of the Data Protection Act 1998.

Members should avoid breaching copyright by publishing images or text on a social media site which is the intellectual property of another person.

2.1.8.5 Paragraph 10 (2)(c)(1) Personal interests: “or any person with whom you have a close personal association”

Various terms are used to define online contacts and associations on various social media sites. These terms include ‘friends’ (Facebook) and ‘followers’ (Twitter). Members should be aware that any person they include as a contact on social media sites could be regarded, for the purposes of the Code of Conduct, as a close personal associate. Members should be cautious that their use of social media sites does not give the perception that a conflict of interests exists. It is advisable that Members, when creating their own content on social media sites, seek to emphasise the distinction between business content and pages containing personal content .

2.1.8.6 Paragraph 12 (1) Prejudicial interests: “...a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest”.

Members should be cautious that their use of social media sites does not give the perception that they have a prejudicial interest in any matter.

2.1.9 Elected Members are bound by the Code of Conduct if they use social media to conduct Council business or are representing the Council. However, an Elected Member could be open to allegations that he / she acted in breach the Code of Conduct if the use made of social media was inappropriate and that he / she was not conducting official business, but merely claiming or giving the impression that he / she was acting in an official capacity.

2.1.10 Anonymous use of social media by Members can also lead to a breach of the code where it can be demonstrated that a Member uploaded the site content and that they were acting in their capacity as a member.

2.1.11 In order to determine whether a Member was acting in an official capacity, it would be necessary to consider the context of a Member’s use of social media, taking into account such factors as:

The public profile of a Member, which can result in a reasonable assumption being made that the Member was acting as a County Councillor;

The privacy settings on the social media site or blog. It is a Member’s responsibility to ensure that appropriate privacy settings are in place. If constituents can access a

Member's posts they may make the reasonable assumption that the Member is acting in an official capacity;

Members should seek to enable other users of social media to avoid any misunderstanding over the official status, or otherwise, of the Member's contributions.

2.1.12 Members should avoid discussing Council business on a personal social media site, or make remarks about others. It is not adequate for Members to subsequently claim that any disputed posts were made in a private capacity.

## 2.2 Use of social media by the public during meetings of the Council

2.2.1 The Council acknowledges the cultural shift towards permitting the use of social media in public life. The Council will therefore permit the use of social media by the public during its meetings provided that the use is unobtrusive and does not disrupt the meeting. The Protocol does not affect the obligations of the Chair to ensure and maintain the good order of the business meeting.

2.2.2 The Council reserves the right to request that members of the public switch off digital equipment if its operation interferes with the operation of the Council's audio-visual equipment or other systems.

2.2.3 The Council tolerates the use by the public of digital media, such as smart-phones, to film its meetings, provided that the use is unobtrusive and does not disrupt the meeting. It is the responsibility of any member of the public that makes use of social media to comply with the law.

2.2.4 It is likely that filming of meetings by the Media may be considered to be more obtrusive and disruptive to the meeting, because of the nature of the digital equipment used. The Council reserves the right to refuse a request by the Media to film meetings, but will permit filming prior to the commencement of any meeting by prior arrangement.

2.2.5 Digital equipment ought not to emit any obtrusive noise which could disrupt meetings. The public ought not to answer telephone calls during meetings, as this is likely to disrupt the meeting. Chairs must advise the public attending meetings of the need to ensure that their digital equipment is set to silent.

## **Part 6 Scheme of Members' Allowances for the Isle of Anglesey County Council**

### **6.1 Rates of Allowances**

6.1.1 Rates of Allowances are specified in the Schedule to this scheme, which shall be updated annually or on any change.