

THE CODE OF CONDUCT

A Guide for
City, Community, Parish and Town
Councillors

October 2012

Contents

Chapter 1

Introduction

The Code of Conduct

Ten General Principles of Public Life

Deciding when the Code of Conduct applies to you

Chapter 2

General obligations under the Code of Conduct

Treating others with respect

Unlawful discrimination

Bullying

Intimidation

Failure to promote and maintain high standards of conduct

Gifts and hospitality

Compromising the impartiality of officers of the authority

Disclosing confidential information

Preventing access to information

Disrepute

Using your position improperly

Using resources for proper purposes only

Considering advice provided to you

Giving reasons for your decisions

Participation at Overview and Scrutiny meetings

Chapter 3 – Interests

The requirement to register your interests

Participation at meetings

Paragraph 5A - Disclosable pecuniary interests

Paragraph 5B - Non-registerable interests

How does this affect me

Chapter 4 – Sensitive interests

Chapter 5 – Dispensations

1 Introduction

The Code of Conduct

On 1 July 2012 The Localism Act 2011, and Regulations made under it, brought about the removal of the statutory Code of Conduct. This was replaced by a requirement in the Act for each Council to maintain high standards of conduct and to adopt a code that deals with the conduct of members and co-opted members when they are acting in that capacity.

As a result of these changes Cornwall Council adopted a Code of Conduct on 3 July 2012. In discussions with the Cornwall Association of Local Councils this Code was adapted to meet the needs of the City, Community, Town and Parish Councils in Cornwall and was sent out to them for adoption as an Interim Code.

This guidance relates to the amended Code recommended for adoption by City, Community, Town and Parish Councils in Cornwall in October 2012.

For further information on the Code of Conduct, registering your interests or on this Guidance you should contact:

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The General Principles of Public Life

The Localism Act 2011 sets out that a relevant authority must adopt a Code and, that in adopting a Code, it is consistent with the seven general principles of public life as are set out in the Act.

When considering the proposed changes to the ethical standards regime the Standards Committee has always been of the opinion that the Ten General Principles of Public Life have served members well and were well understood by members, accordingly the Standards Committee recommended that all ten principles should be included in any future Code.

These ten principles define the standards that members and co-opted members should uphold in their public life, and serve as a reminder of the purpose of the Code of Conduct.

While the Code is to be consistent with these principles the principles themselves do not create a statutory obligation for members, nor do they form part of the Code itself. The Code should however, always be read together with these principles.

While not forming part of the Code you should be aware that a failure to act in accordance with these general principles may amount to a breach of the Code of Conduct. For example, by placing yourself in situations where your honesty and integrity may be questioned, your conduct may be “conduct” which could reasonably be regarded as bringing your office or the Council into disrepute” as stated in paragraph 2.10 of the Code of Conduct.

The General Principles of Public Life

Selflessness – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Personal judgement – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Deciding when the Code of Conduct applies to you

Paragraphs 1.1 – 1.6 of the Code

The Code of Conduct applies to you:

1. As a Member of the Council.
2. Other than as set in paragraphs 1.5 and 1.6 of the Code you are required to comply with the Code whenever you:
 - a) are conducting the business of the Council, which includes the business of the office to which you have been elected or appointed; or
 - b) act, hold yourself out as acting or conduct yourself in such a way that a third party could reasonably conclude that you are acting as a representative of the Council.

In all cases references to 'official capacity' will be construed accordingly.

In complying with the Code of Conduct:

3. If you act as a representative of the Council on another authority which has a Code of Conduct, you must, when acting for that other authority, comply with that other authority's Code of Conduct; or
4. If you are acting as a representative of the Council on any other body, you must, when acting for that other body, comply with this Code of Conduct, except insofar as it conflicts with any lawful obligations to which that other body may be subject.

If you are a member of an authority, other than the Council, you must comply with the Code of Conduct which is relevant to the role you are acting in.

As set out above the Code only applies if you are conducting the business of the Council, which includes the business of the office to which you have been elected or appointed or you act, hold yourself out as acting or conduct yourself in such a way that a third party could reasonably conclude that you are acting as a representative of the Council. Accordingly this Code does not apply when you are acting in your private capacity.

If you are a member of a number of authorities and are unsure which Code is applicable to you advice can be sought from your Proper Officer of the Council which is usually the Clerk to the Council.

2. General Obligations under the Code of Conduct

Treating others with respect

See Paragraph 2.1

You must treat others with respect.

In politics, even at a local level rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is an important part of democratic debate, and does not in itself amount to failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives and is a potential breach of the Code.

Unlawful Discrimination

See Paragraph 2.2

You must not treat others in a way that amounts to or which may be reasonably construed as unlawfully discriminating against them. Equality laws prohibit discrimination on the grounds of sex, race, disability, religion or belief, sexual orientation and age.

The provisions of these laws are complex. In summary, there are four main forms of discrimination:

- Direct discrimination: treating people differently because of their sex, race, disability, religion or belief, sexual orientation or age.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their sex, race, disability, religion or belief, sexual orientation or age, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of sex, race, disability, religion or belief, sexual orientation or age, which has the intention or the effect of violating another person's dignity or creates a hostile, degrading, humiliating or offensive environment

- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Equality laws also impose positive duties to eliminate unlawful discrimination and harassment and to promote equality. They also impose specific positive duties on certain authorities.

Accordingly you must not act in a way which may amount to any of the unlawful forms of discrimination as set out above. To do so could result in a complaint being made that you have breached this paragraph of the Code of Conduct

Bullying

See Paragraphs 2.3

You must not bully any person this includes other councillors, council officers or members of the public

Bullying may 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 challenging 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.

It is important that you raise issues about poor performance in the correct way and at the proper forum. However, if your criticism is a personal attack, is unnecessarily protracted or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

Intimidation

See Paragraph 2.4

You must not intimidate or attempt to intimidate others.

You must not intimidate or attempt to intimidate any person including, but not limited to, anyone 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 of Conduct.

However much you may be concerned about a matter with which you are involved, it is always wrong to, intimidate or attempt to intimidate any other person who may also be involved.

For example: If you intimidate a witness in an investigation about your conduct, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

Failure to promote and maintain high standards of conduct

See Paragraph 2.5

You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct. The Council's duty to promote and maintain high standards of conduct arises under the Localism Act.

While the Council as a whole is charged with this duty, each Member has an obligation to assist the Council in both promoting and maintaining high standards of conduct. If a Member were to prevent the Council from meeting this duty, this paragraph of the Code may have been breached.

Gifts and Hospitality

See Paragraph 2.6

You must not accept gifts or hospitality that could be seen by the public as likely to influence your judgement in relation to any matter that you deal with in your official capacity. There is no requirement to register or declare any gifts or hospitality which have been offered or received.

From time to time Members may be offered gifts by their constituents which are often small tokens of appreciation for a job well done. In the normal course of events acceptance of these gifts by the Member would not be seen by a member of the public as an attempt to influence your opinion.

However, on occasion larger gifts or corporate hospitality may be offered and it will be for you to consider whether by accepting such a gift it may influence your judgement were you then to deal in your official capacity with any matter

related to the person or body that has presented you with the gift.

Compromising the impartiality of officers of the authority

See paragraph 2.8

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority.

You should not approach or pressure anyone who works for, or on behalf of, the authority 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.

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.

Disclosing confidential information

See Paragraph 2.8

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

- (i) You have the consent of the person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person;
- (iv) the disclosure is:
 - a) in the public interest
 - b) made in good faith; and
 - c) in compliance with the reasonable requirements of the authority, which requirements must be demonstrable by reference to an adopted policy, procedure or similar document of the Council or evidenced by advice provided by the Monitoring Officer or his nominee.

For a disclosure to be in the public interest all of the following four requirements have to be met:

1. The disclosure must be reasonable
2. The disclosure must be in the public interest
3. The disclosure must be made in good faith
4. The disclosure must be made in compliance with any reasonable requirements of your authority

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

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:
 - Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
 - Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
 - The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
 - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
 - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
 - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
 - Whether the disclosure involves your authority failing in a duty of confidence owed to another person i/e is the disclosure a breach of data protection legislation.
2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, which has either happened in the past, is currently happening, or is likely to happen in the future:
 - a. A criminal offence is committed.
 - b. Your authority or some other person fails to comply with any legal

- obligation to which they are subject.
- c. A miscarriage of justice occurs.
 - d. The health or safety of any individual is in danger.
 - e. The environment is likely to be damaged.
 - f. That information tending to show any matter falling within (a) to (e) is deliberately concealed.
3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.
 4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any other factors that may be in the public interest which favours disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Preventing access to information

See paragraph 2.9

You must not prevent or attempt to prevent another person from gaining access to information to which that person is 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 or information you may hold as a Councillor from, for example, dealing with someone in the course of your casework. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 845 630 6060

Disrepute

See Paragraph 2.10

You must not conduct yourself in a manner which could be reasonably be regarded as bringing your office or authority into disrepute.

As a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions may have an adverse impact on your office or your authority.

Disrepute can be defined as a lack or loss of good reputation; this can include reducing the public's confidence in the member's ability to fulfil their role or something that adversely affects the reputation of the member or their authority generally.

For example: Were you to be found to have failed to have treated a member of the public with respect it may also be found that you have brought your office, and depending on the severity of the allegations, your authority into disrepute.

Using your position improperly

See Paragraph 2.11

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.

You should not use, or attempt to use, your public office either for your own 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 by utilising your access to other members and officers in an attempt to resolve a personal matter.

In addition to paragraph 2.11, paragraphs 5A and 5B are also designed to prevent you from using your position improperly as they require you to register and declare interests and to leave the meeting where a matter is being discussed in which you either have a pecuniary or a non-registerable interest

Using resources for proper only

See Paragraph 2.12

You must when using or authorising the use by others of the resources of the Council:

- i) Act in accordance with the reasonable requirements of the Council;
- ii) ensure that such resources are not used improperly for political, including party political, purposes; and
- iii) have regard to any statutory or other requirement relating to local authority publicity.

Where the Council provides you with resources, for example a telephone, computer and other IT facilities, you must only use these resources for carrying out the business of the Council or any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources

made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code of Conduct.

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

You should also not use the resources of your authority for political purposes however, the Council may authorise you to use its resources and facilities in connection with Council business, such as in dealing with correspondence from your constituents

Considering advice provided to you

See Paragraph 2.13

When reaching decisions on any matter you must have regard to any advice given to you by the Council's Chief Financial Officer and Monitoring Officer.

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

As a member of a City, Community, Town or Parish Council the Code requires that you must have regard to any relevant advice provided to you by the Proper Officer of the Council which is usually the Clerk to the Council

Giving reasons for decisions

See Paragraph 2.14

You must give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council.

Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected. Where members disagree with officer recommendations in making a decision, members will need to take particular care in giving clear reasons for the decision.

3 Interests

Part 3 of the Code of Conduct sets out the requirement to register and declare your interests and also make it a requirement for you to withdraw from the room or chamber in which a matter in which you have an interest is being discussed.

The interests as set out in the Code which require registering are those as defined by the Secretary of State, these can be found at paragraph 5A of the Code and are defined as Disclosable Pecuniary Interests. Non-registerable interests are found at part 5B of the Code and, as the name would imply, these interests do not require registering on your register of interests form. However, should you have a non-registerable interest in a matter under discussion you are required to comply with the Code. What actions you are required to take in these circumstances is set out below.

The provisions relating to both the requirement to register interests and to declare them are subject to the provisions surrounding sensitive interests as set in at Part 4 of the Code and this guidance.

The requirement to register your interests

All members of a relevant authority, which include a City, Community, Town or Parish Council have a legal duty under the Localism Act 2011 to register pecuniary interests in the register maintained by the Monitoring Officer for their area. The types of interests that must be registered are prescribed in regulations as set out by the Secretary of State. Currently those regulations are The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Paragraph 3.2 of the Code states:

Within 28 days of becoming a Member you must notify the Council's Monitoring Officer of any disclosable pecuniary interests that you have at the time of giving the notification.

Paragraph 3.3 of the Code further states:

Where you become a Member as a result of re-election or your co-option being renewed you need only comply with paragraph 3.2 of the Code to the extent that your disclosable pecuniary interests are not already entered onto the register at the time the notification was given.

For clarity paragraph 3.4 of the Code states:

You are not required to notify non-registerable interests to the Monitoring Officer for inclusion on the register.

The Monitoring Officer for all City, Community, Town or Parish Councillors in Cornwall is the Monitoring Officer of Cornwall Council.

When registering your interests it is a requirement for you to register any interests which are within the categories as set out at paragraph 5A of the Code in relation to:

- you; **and**
- your spouse or civil partner, a person you are living with as your husband or wife, or a person you are living with as if you are civil partners (in relation to these latter interests you must be aware of the interest of the other person for the obligation to register to arise)

Please note – In asking for this information Cornwall Council has not determined what interests you are required to register. The classes of interest that have to be registered have been determined by the Secretary of State as set out in the Regulations referred to above.

It is important you note that you will commit a criminal offence if, without reasonable excuse if you,

(i) fail to provide information that you are required to register; or (ii) provide information that is false or misleading and you know that the information is false or misleading or you are reckless as to whether the information is true and not misleading. If you commit such an offence you can be liable on summary conviction to a fine not exceeding level 5 on the standard scale and be disqualified from holding public office for up to 5 years. (*Section 34 of the Localism Act 2011*)

When notifying the Monitoring Officer of your interests this must be done in writing but notifications by e-mail will be accepted.

Participation at Meetings

Paragraph 3.5 of the Code states:

If you are present at a meeting and you are aware that you have a non-registerable interest or a disclosable pecuniary interest in any matter being considered or to be considered at the meeting you must disclose that interest to the meeting if that interest is not already entered in the register and, unless you have the benefit of a current and relevant dispensation in relation to that matter, you must:

- (i) not participate, or participate further, in any discussions of the matter at the meeting;
- (ii) not participate in any vote, or further vote, taken on the matter at the meeting; and
- (iii) remove yourself from the meeting while any discussion or vote takes place on the matter, to the extent that you are required to absent yourself in accordance with the Council's standing orders or other relevant procedural rules.

Meetings are defined as, 'any meeting of the Council and any of the Council's committee's, sub committee's, joint committee's with other authorities or other formal meetings.'

Paragraph 5A - Disclosable Pecuniary Interests

The interests which you are required to register are those that have been defined by the Secretary of State as Disclosable Pecuniary Interests and are set out at paragraph 5A of the Code. These interests also affect your ability to participate at a meeting where you have a disclosable pecuniary interest in any of the matters that are to be considered at the meeting. The flow chart at Appendix 2 will assist with what actions you need to take at a meeting if you have a disclosable pecuniary interests in any matter as these actions are dependent on whether you have registered the interest or not.

To assist with the understanding of disclosable pecuniary interests paragraph 5A(a) of the Code reproduces the meanings given in the Regulations to certain words that are found in paragraph 5A(b) in order to assist with the interpretation of the interests.

Paragraph 5A(b) of the Code then goes on to set out what are considered by the Secretary of State to be Disclosable Pecuniary Interests, these are set out below. The wording in italics is to aid with the interpretation of the interest.

5A(b)(i) Employment etc.

This is described in the regulations as any employment, office, trade, profession or vocation carried on for profit or gain and can be considered as the job or other means by which you or your spouse, civil partner, etc. make your living, whether employed or self-employed.

In considering if you have an interest under paragraph 5A(b)(i) you need to consider your job, business, office, trade or profession for which you are or should be paid and if not registered this will need to be stated at the meeting. This section does not include any voluntary work for which you are not paid or reimbursed, whether for your time or otherwise.

5A(b)(ii) Sponsorship

The regulations consider this to be any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

This interest includes any money, whether in cash or otherwise, or any financial benefit, such as the remission of monies you would otherwise have been required to pay or something else representing a financial benefit if any of these relate to your election expenses or your expenses in carrying out your duties as a member, so far as received in the 12 months ending with the day on which you register the payment or benefit. If not registered you will need to state at the meeting what the payment or benefit was, from whom it was received (including any trade union) and what it related to. It does not include such of the above as have been received from the council you are a member of so, for example, you will not need to register expenses and allowances received from your council in your capacity as a member.

You will be aware that you are required to register/declare this interest however, the neither the regulations nor the code require you to register or declare sponsorship relating to your spouse, civil partner etc. However, you should remember that any sponsorship your spouse civil partner etc may receive has the potential to create an interest under paragraph 5(B) as a non-registerable interest.

5A(b)(iii) – Contracts

This is stated in the regulations as being any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:

(a) under which goods or services are to be provided or works are to be executed; and

(b) which has not been fully discharged.

In considering this as an interest the word 'contract' has the usual meaning and it includes any contract between (1) the council of which you are a member and (2) you, your spouse, civil partner etc., a firm in which you, your spouse, civil partner etc. are a partner or an incorporated entity (e.g. a company) of which you, your spouse, civil partner etc. are a director or in the securities of which you, your spouse or civil partner etc. have a beneficial interest. The contract will relate to the provision of goods and services and there will still be obligations to be performed by one or more of the parties to the contract. Such contracts might relate to, e.g. carrying out works to your council's premises, providing your council with stationery or computers or receiving goods or services from your council.*

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

5A(b)(iv) – Land

This is simply stated in the regulations as being any beneficial interest in land which is within the area of the relevant authority.

This interest covers any land or property in the area of the council of which you are a member in relation to which you, your spouse, civil partner etc. (i) are the owner(s), lessee(s) or lessor(s); (ii) are otherwise legally entitled to occupy; (iii) are entitled to receive the rents or profits; (iv) are a lender with security over the land or property; or (v) otherwise have the right to claim a share or all of such land or property, the proceeds of sale of or the income from it. This will include home addresses as well as business addresses where the business is yours or you have a share in such land and property as a result of your interest in the business.

5A(b)(v) – Licences

This is defined in the regulations as any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Paragraph 5A(b)(v) covers any written or verbal licence (permission) to occupy land in the area of the council of which you are a member such as in relation to an allotment, grazing horses, access to land for fishing purposes or the use of a garage. The licence needs to be registered whether you, your spouse, civil partner etc. hold it or benefit from it alone or jointly with others.

5A(b)(vi) – Corporate Tenancies

This is set out in the regulations as any tenancy where (to the member's knowledge)—

- (a) the landlord is the relevant authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

For guidance this relates to any tenancy between (1) the council of which you are a member and (2) a firm in which you, your spouse, civil partner etc. are a partner or an incorporated entity (e.g. a company) of which you, your spouse, civil partner etc are a director or in the securities of which you, your spouse, civil partner etc. have a beneficial interest.*

'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the [Financial Services and Markets Act 2000](#) and other securities of any description, other than money deposited with a building society.

5A(b)(vii) – Securities

This is any beneficial interest in securities of a body where—

- (a) that body (to the member's knowledge) has a place of business or land in the area of the relevant authority; and
- (b) either—
 - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For guidance this is any securities that you, your spouse, civil partner, etc. own, with or without others, which are shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society. The body to which the securities relate needs to have a place of business or land in the area of the council of which you are a member and one of the conditions in (b)(i) or (ii) above has to be met. Even if the body is dormant the securities must be registered. We have interpreted 'place of business' as including the registered office of the body.

Paragraph 5B – Non-registerable interests

In addition to the requirement under paragraph 3.5 of the Code to not participate or vote in any matter in which you have an interest in arising under paragraph 5A there is also a requirement for you to take the same actions in relation to any interests that may arise under paragraph 5B of the Code, which

states:

You have a non-registerable interest where a decision in relation to a matter being determined or to be determined:

- (i) might reasonably be regarded as affecting the financial position or well being of you; a member of your family or any person with whom you have a close association; or any body or group which you are a member of more than it might affect the majority of council tax payers, rate payers or inhabitants in your electoral division or area; and
- (ii) the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest.

How does this affect me?

The following can be used as a guide to help you determine if you have an interest under paragraph 5B of the Code.

What does "affecting well-being or financial position" mean?

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being.

A personal interest can affect you, your family or close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, a personal interest would need to be declared in both situations.

Who is a member of your family or close associate?

A member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.

What does it mean by "more than it might affect the majority of council tax payers, rate payers or inhabitants in your electoral division or area"?

No issue will arise where the matter under consideration affects you to the same extent as other council tax payers, rate payers, or inhabitants in your division or area.

How do I judge if the interest is so significant that it is likely to prejudice my judgement of the public interest?

For an interest to be declarable under paragraph 5B it must be such that it is likely to prejudice your judgement. In other words the interest must be likely to impair your judgement when you are considering a whether a matter which is in the public interest. Local knowledge or connections with the local community are not normally sufficient to meet this test. There must be some other factor that others would think may harm your ability to view the matter under consideration objectively.

When considering if you have an interest that may prejudice your views the SOAP test may be of use;

Selflessness: Could any and every decision you have made in connection with the matter be regarded as selfless?

Objectivity: Could you be regarded as being as objective in the matter as other members that are considering the same matter?

Accountability: Could your involvement stand up to public scrutiny?

Public interest: Would the public interest be harmed by the member's involvement.

The flowchart attached to this guidance at Appendix 2 demonstrates the actions you should take if you have either a disclosable pecuniary interest or a non-registerable interest and you are attending a meeting where you have an interest in an item on the agenda.

4 Sensitive Interests

Paragraph 4.1 of the Code states:

Members must notify the Monitoring Officer of the details of sensitive interests but the details of such interests will not be included in any published version of the register.

Paragraph 4.2 then further states:

The requirement in paragraph 3(5) of Part 3 of the Code to disclose interests to meetings shall in relation to sensitive interests be limited to declaring the existence of an interest and the detail of the interest need not be declared.

What is a sensitive interest?

This is an interest which is likely to create a serious risk of violence or intimidation against you or someone which whom you have a close association were this to be placed in the public domain. For example: A sensitive interest may arise under employment if employed by an establishment that conducts scientific research or if someone with whom you have a close association is involved with scientific research.

The Code requires that this information is still provided to the Monitoring

Officer but it will not be included in any published version of your register of interests and should you be at a meeting where in the normal course of events you would be required to declare the existence of an interest if the interest is one that is considered sensitive you only need to disclose the existence of the interest, not the nature of it.

5 Dispensations

The Localism Act 2011 allows a dispensation to be granted in relation to the member's requirement not to participate in the discussion of any matter at a meeting, or to participate in any vote on a matter in which they have a disclosable pecuniary interest.

Should you consider that you require a full or partial dispensation to remove one or more of the restrictions set out at paragraphs 3(5)(i), 3(5)(ii) or 3(5)(iii) of the Code you should initially make your request in writing to the Proper Officer who is usually the Clerk to the Council setting out the reasons why you consider that a dispensation should be granted.