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**MONDAY, 13 SEPTEMBER 2021**

**TO: ALL MEMBERS OF THE STANDARDS COMMITTEE**

I HEREBY SUMMON YOU TO ATTEND A VIRTUAL MEETING OF THE **STANDARDS COMMITTEE** WHICH WILL BE HELD ON **MONDAY, 20TH SEPTEMBER, 2021** FOR THE TRANSACTION OF THE BUSINESS OUTLINED ON THE ATTACHED AGENDA.

*Wendy Walters*

**CHIEF EXECUTIVE**



PLEASE RECYCLE

<b>Democratic Officer:</b>	<b>Martin S. Davies</b>
<b>Telephone (direct line):</b>	<b>01267 224059</b>
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Wendy Walters Prif Weithredwr, *Chief Executive*,  
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County Hall, Carmarthen. SA31 1JP

# STANDARDS COMMITTEE

## MEMBERSHIP: 9 MEMBERS

### Independent Members (5)

- |    |                    |                             |
|----|--------------------|-----------------------------|
| 1. | Mrs Mary Dodd      | Vice-Chair of the Committee |
| 2. | Mrs Daphne Evans   |                             |
| 3. | Mrs Julie James    |                             |
| 4. | Mr M. Andre Morgan | Chair of the Committee      |
| 5. | Mr Alun Williams   |                             |

### Community Committee Member (1)

1. Town Councillor Philip Rogers

### Elected Members of the County Council (3)

1. Councillor Jeanette Gilasbey
2. Councillor Rob James
3. Councillor Gareth Thomas

# AGENDA

1. APOLOGIES FOR ABSENCE.
2. DECLARATIONS OF PERSONAL INTEREST.
3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE 12TH JULY, 2021. 5 - 8
4. CODE OF CONDUCT TRAINING. 9 - 12
5. CODE OF CONDUCT DATA. 13 - 14
6. REVISED CODE OF CONDUCT GUIDANCE. 15 - 172
7. ADJUDICATION PANEL FOR WALES - CLLR DAVID POOLE. 173 - 188
8. REVIEW OF WHISTLEBLOWING POLICY. 189 - 210
9. ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.

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Monday, 12 July 2021

**PRESENT:** Mr. M.A. Morgan (Chair)

**Councillors:**

M. Dodd, D. Evans, J. James, and A. Williams

**Community Member:-**

Town Councillor P. Rogers

**Councillors:**

W.T. Evans (substitute for Councillor G.B. Thomas) and S.J.G. Gilasbey

**The following Officers were in attendance:**

L.R. Jones, Head of Administration and Law

R. Edgecombe, Legal Services Manager

S. Rees, Simultaneous Translator

J. Owen, Democratic Services Officer

K. Thomas, Democratic Services Officer

**Remote Meeting - , - 2.00 - 2.40 pm**

**1. APOLOGIES FOR ABSENCE.**

An apology for absence was received from Councillor G.B. Thomas.

**2. DECLARATIONS OF PERSONAL INTEREST.**

There were no declarations of personal interest.

**3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE 14TH JUNE 2021**

**RESOLVED** that the minutes of the meeting of the Standards Committee held on the 14<sup>th</sup> June, 2021 be signed as a correct record.

**4. APPLICATION FOR DISPENSATION BY CLLR P COMLEY**

The Committee considered an application submitted by Community Councillor Peter Comley for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak and make written representations, but not vote, on matters relating to the payment of rent by Betws RFC to Betws Community Council.

It was reported that a dispensation was sought as Councillor Comley had a personal and prejudicial interest in this matter as he was the Secretary, Treasurer and Licensee for Betws RFC and also a member of the club Committee, and that a member of the public, with full knowledge of the facts, would reasonably regard that interest as being so significant it would be likely to prejudice the Councillor's judgement of the public interest. Councillor Comley had accordingly requested that a dispensation be granted under Regulations 2 (f) and (h) of the Standards

Following a discussion it was:-

## **RESOLVED**

- 4.1 that dispensation be granted under Regulations 2 (f) and (h) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to Councillor Peter Comley for dispensation to speak and make written representation, but not vote, at meetings of Betws Community Council in respect of matters relating to the payment of rent by Betws RFC to the Betws Community Council
- 4.2 That the period of dispensation be granted to the end of Councillor Comley's current term of office up to the local government elections in May 2022

## **5. REVIEW OF WHISTLEBLOWING POLICY**

In accordance with minute 5 of its meeting held on the 14<sup>th</sup> June, 2021 the Committee considered a report detailing the following proposed changes to the Council's approved Whistleblowing Policy aimed at improving processes and reflecting recent experiences:-

- A new paragraph 20 dealing with whistleblowing complaints by employees of the Council's Local Authority Trading Companies. *(NB. If approved, this will cause subsequent paragraphs to be renumbered accordingly)*
- A change to the flowchart in Appendix A to provide that the feedback form is sent to whistle-blowers by the Contact Officer instead of the Monitoring Officer
- A change to the Feedback form inserting email contact details for where it should be sent.

In response to a question on the appropriateness of the inclusion of the Chair of the Standards Committee in the list of contactable persons within the Policy, the Monitoring Officer suggested that she, together with the Legal Service Manager, could examine the points raised by members and report back to a future meeting of the Committee.

## **UNANIMOUSLY RESOLVED**

- 5.1 that the changes to the Council's Whistleblowing Policy be approved.
- 5.2 That a report be submitted to a future meeting of the Committee on the appropriateness of the inclusion of the Chair of the Standards Committee in the list of contactable persons detailed within the Policy

## **6. ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.**

There were no items of urgent business.

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**CHAIR**

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**DATE**

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## STANDARDS COMMITTEE 20/09/2021

CODE OF CONDUCT TRAINING		
<b>Recommendations / key decisions required:</b> To note the outcome of the training provided in July and any feedback received from attendees.		
Reasons: Online training events were held on the 21 <sup>st</sup> and 22 <sup>nd</sup> July 2021		
Relevant scrutiny committee to be consulted NA		
Cabinet Decision Required NA Council Decision Required NA		
CABINET MEMBER PORTFOLIO HOLDER:- Cllr Emlyn Dole - Leader		
Directorate:  Name of Head of Service:  Linda Rees-Jones  Report Author: Robert Edgecombe	Designations:  Head of Administration and Law  Legal Services Manager	Tel:  Email addresses: <a href="mailto:rjedgeco@carmarthenshire.gov.uk">rjedgeco@carmarthenshire.gov.uk</a>  01267 224018

**EXECUTIVE SUMMARY  
STANDARDS COMMITTEE  
20/09/2021**

**CODE OF CONDUCT TRAINING**

In accordance with arrangements previously approved by the Standards Committee code of conduct training sessions were held for Town and Community councillors on the 21<sup>st</sup> and 22<sup>nd</sup> July via Zoom.

Attendance was slightly down on previous years, being as follows

21<sup>st</sup> July – 30

22<sup>nd</sup> July – 50

A total of 23 councils (roughly a third of the total number) were represented.

Copies of the training presentation, a briefing note on recent code of conduct cases and a feedback questionnaire have been sent to all Town and Community Councils.

NB. Carmarthen Town Council also arranged its own code training events with One Voice Wales on the 20<sup>th</sup> and 21<sup>st</sup> July which were attended by 9 of its councillors plus the clerk and deputy clerk.

**DETAILED REPORT ATTACHED?**

**NO**

**IMPLICATIONS**

**I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:**

**Signed:** *LRJones*

**Administration and Law**

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below Signed: <i>LRJones</i> <span style="float: right;">Head of Administration and Law</span>	
1. <b>Scrutiny Committee</b> – not applicable 2. <b>Local Member(s)</b> - not applicable 3. <b>Community / Town Council</b> - it is suggested that such consultation take place 4. <b>Relevant Partners</b> - not applicable 5. <b>Staff Side Representatives and other Organisations</b> - not applicable	
<b>CABINET BOARD PORTFOLIO HOLDER(S) AWARE/CONSULTED</b>	No

<b>Section 100D Local Government Act, 1972 – Access to Information</b> <b>List of Background Papers used in the preparation of this report:</b>		
Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-190	County Hall, Carmarthen

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## STANDARDS COMMITTEE 20/09/2021

CODE OF CONDUCT DATA		
<b>Recommendations / key decisions required:</b> To note the progress made to date in obtaining data from Town and Community Councils		
<b>Reasons:</b> The committee has asked to be kept informed of progress Relevant scrutiny committee to be consulted NA		
Cabinet Decision Required NA Council Decision Required NA		
CABINET MEMBER PORTFOLIO HOLDER:- Cllr Emlyn Dole - Leader		
<b>Directorate:</b>  <b>Name of Head of Service:</b>  Linda Rees-Jones  <b>Report Author:</b> Robert Edgecombe	<b>Designations:</b>  Head of Administration and Law   Legal Services Manager	<b>Tel:</b>  <b>Email addresses:</b> <a href="mailto:rledgeco@carmarthenshire.gov.uk">rledgeco@carmarthenshire.gov.uk</a>  01267 224018

# EXECUTIVE SUMMARY STANDARDS COMMITTEE 20/09/2021

## CODE OF CONDUCT DATA

At its meeting in March 2021 the Committee resolved to undertake another annual exercise collecting code compliance data from Town and Community Councils. A letter was sent to all 72 councils on the 13<sup>th</sup> April 2021 asking for replies by the 1<sup>st</sup> June 2021.

By the committee meeting on the 14<sup>th</sup> June 23 responses have been received from out of 72 Councils

Reminder letters were therefore sent to all councils that had not responded.

As at the 8<sup>th</sup> September 2021 the total number of councils that have responded is 54 out of 72

**DETAILED REPORT ATTACHED?**

**NO**

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**EXECUTIVE BOARD PORTFOLIO  
HOLDER(S) AWARE/CONSULTED**

NO

**Section 100D Local Government Act, 1972 – Access to Information  
List of Background Papers used in the preparation of this report:**

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-190	County Hall, Carmarthen

**STANDARDS COMMITTEE**  
**20/09/2021**

<b>REVISED CODE OF CONDUCT GUIDANCE</b>		
<b>Recommendations / key decisions required:</b> To note the revised guidance issued by the Public services Ombudsman for Wales		
Reasons: Revised guidance was issued by the Ombudsman in May 2021		
Relevant scrutiny committee to be consulted    NA		
Cabinet Decision Required	NA	
Council Decision Required	NA	
CABINET MEMBER PORTFOLIO HOLDER:-    Cllr Emlyn Dole - Leader		
Directorate:  Name of Head of Service:  Linda Rees-Jones  Report Author: Robert Edgecombe	Designations:  Head of Administration and Law    Legal Services Manager	Tel:  Email addresses: <a href="mailto:rjedgeco@carmarthenshire.gov.uk">rjedgeco@carmarthenshire.gov.uk</a>  01267 224018

# EXECUTIVE SUMMARY STANDARDS COMMITTEE 20/09/2021

## REVISED CODE OF CONDUCT GUIDANCE

The Public Services Ombudsman for Wales has issued two sets of revised guidance on the application of the Members Code of Conduct.

The first set of guidance is directed at members of county borough councils, fire and rescue authorities, national park authorities and police and crime panels

The second set of guidance is directed at Town and Community councils.

The revised guidance reflects legislative changes introduced by the Local Government and Elections (Wales) Act 2021

Copies of both sets of guidance are attached.

**DETAILED REPORT ATTACHED?**

**NO**

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**EXECUTIVE BOARD PORTFOLIO HOLDER(S) AWARE/CONSULTED**

NO

## Section 100D Local Government Act, 1972 – Access to Information List of Background Papers used in the preparation of this report:

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-190	County Hall, Carmarthen



# **The Code of Conduct**

## for members of local authorities in Wales

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

## Preface

This revised guide from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales. I have issued separate guidance for members of community and town councils.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.<sup>2</sup>

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

The guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement, including the powers of sanction available to standards committees and the Adjudication Panel for Wales. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your authority by downloading it from your authority’s website, or by contacting your Monitoring Officer or Democratic Services Department.

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

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

The 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.

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging. As before, it excludes guidance which only relates to community and town councillors, as this is included in the separate guidance I have issued for such councillors.

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

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

As a member, you will be offered training on the Code, from a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements for dealing with ‘member versus member’ complaints, which have proved very effective as a means of resolving many of these cases.

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

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

During the course of my review of this guidance, the Welsh Government announced that it was commissioning a review of the local government ethical framework. My team and I look forward to contributing to that review and I will revisit this guidance in light of its outcome, when known.

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a large, sweeping flourish at the end.

Nick Bennett  
Public Services Ombudsman for Wales  
May 2021

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

- county and county borough councils
- fire and rescue authorities
- national park authorities
- police and crime panels in Wales

## Acknowledgement

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

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

First published April 2010. This edition published May 2021.

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## 1 Introduction

- 1.1 The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>3</sup> which all relevant authorities were required to adopt.<sup>4</sup>
- 1.2 For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>5</sup>
- 1.3 Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.
- 1.4 Standards committees of principal councils<sup>6</sup> are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees. Sanctions guidance issued by the President of the

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

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

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

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



Adjudication Panel for Wales indicates that a refusal, or failure, to attend available training on the Code will be regarded by its tribunals as an aggravating factor when assessing the sanction to be applied to a member found to have breached the Code.

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

### Investigations: Assessing the Public Interest

- 1.6 It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test..
- 1.7 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.

### 1.8 Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has previously been found to have breached the Code by a standards committee or the Adjudication Panel for Wales
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel 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 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.

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

## Legal Precedents

- 1.10 When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup>
- 1.11 In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.
- 1.12 In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards

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

officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

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

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

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

### Local Resolution Process

1.16 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. In some cases, the arrangements also cover complaints made about members by officers. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me

about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the authority's Monitoring Officer for consideration under this process, in the first instance.

- 1.17 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.
- 1.18 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.
- 1.19 When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.
- 1.20 Local resolution can also play an important role within community councils where, all too often, low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly

encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

1.21 An overview of the complaints process is at Appendix 1 to this guidance.

### Standards Committee

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

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

1.24 When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

- 1.25 A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.
- 1.26 The Local Government and Elections (Wales) Act 2021 (the 2021 Act), which received Royal Assent on 20 January 2021, places new duties on the standards committee of a county and county borough council in Wales which come into force from 5 May 2022. The committee will have the additional function of monitoring and providing support to political group leaders in principal councils in undertaking their new duty, under the 2021 Act, to promote high standards of conduct by members of their group. Each standards committee will also be required to make an annual report to their authority describing how the committee's functions have been discharged and providing an overview of conduct matters generally within the authority. The 'Explanatory Notes' to the 2021 Act indicate that the requirement on a principal council's standards committee to make a report includes a requirement to make a report to any community and town councils in its area.

### Political Group Leaders

- 1.27 As mentioned above, the 2021 Act also introduces a new duty on political group leaders in a county or county borough council to take reasonable steps to promote and maintain high standards of conduct by members of their group. In doing so, a group leader must co-operate with the standards committee when exercising its functions. In turn, a standards committee must ensure group leaders have access to advice and training to support them in undertaking their new duties and to monitor group leaders' compliance with those duties. A group leader who fails to comply with the new duty in a meaningful way may potentially be regarded as bringing their office into disrepute, in breach of paragraph 6(1)(a) of the Code

## Adjudication Panel for Wales

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

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

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

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

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



- 1.32 Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).
- 1.33 Further information about the role and procedures of the Adjudication Panel and its tribunals, including guidance on sanctions, can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Principles

- 1.34 The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these Principles which are designed to promote the highest possible standards. These Principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the authority’s resources and equality and respect for others.
- 1.35 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.
- 1.36 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. Paragraph 2(2) of the Code states that you should read it together with the Principles, which are prescribed in a separate statutory instrument<sup>8</sup>. For ease of reference, they are replicated below.

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<sup>8</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2002 No. 2276 (W.166)

### **1. Selflessness**

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

### **2. Honesty**

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

### **3. Integrity and Propriety**

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

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

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

### **5. Stewardship**

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

### **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.

1.37 The Code is consistent with, and provides for the practical application of, these Principles. The Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**. Given the close association between the Principles and the Code, if you follow the Principles as a basis for your conduct, you are less likely to behave in a way that will constitute a failure to comply with the Code.

## Deciding when the Code applies to you See paragraphs 2 and 3



1.38 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, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a authority. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your authority, some of the provisions of the Code apply to you at all times.

1.39 When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time. Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

## When does the Code apply?

1.40 The Code applies:

- **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 (paragraph 2(1)(a)-(c)).
- **At any time**, if you conduct yourself in a manner which could **reasonably** be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

- 1.41 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 its code of conduct** (paragraph 3(a)).

When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website:

[www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

- 1.42 If you are acting as a representative of your authority on another body, for example on the board of a housing association, which does not have a code of conduct relating to its members, you must comply with your authority's own Code** unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

- 1.43 If you refer to yourself as 'councillor' (or 'member' of your authority) in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way, or comments you make are clearly related to your role as a member, then the Code will apply to any comments you make there. Even if you do not refer to your role as a councillor or member, 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.

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

- 1.45 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.

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

### **Example 1– compliance with another body's code(paragraph 3(a))**

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

### **Example 2 – official capacity and misuse of resources (paragraphs 2(1)(b) and 7)**

An online poll about a person accused of murder which contained inappropriate language was set up using a member's council-provided laptop, internet access and his council email address. The member said he personally had not set up the poll. The Adjudication Panel found that, as the Council had provided him with the laptop, he was responsible for it and its proper use. He also made disparaging comments about housing benefit claimants on his Facebook page when responding to a request for advice in his councillor role. The Adjudication Panel rejected his assertion that the comments had been made in a personal capacity, finding that the member

had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.

### **Example 3 – official capacity (paragraph 2(1)(b))**

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

### **Example 4 – personal capacity and disrepute (paragraphs 2(1)(d) and 6(1)(a))**

A Community Councillor, whilst acting in a personal capacity, posted a number of messages on Facebook about high-profile politicians which the Adjudication Panel found were extreme, threatening and which promoted violence towards the subjects of the messages. The Panel noted that whilst politicians were expected to possess "thick skins" and display a greater tolerance than ordinary citizens, such tolerance should not have to extend to personal, inflammatory and egregious comments such as those that had been posted. The Panel found the comments were not 'political expression', which might be afforded protection under the ECHR, and were sufficiently serious in nature as to bring the office of member and the Council into disrepute in breach of paragraph 6(1)(a).

The Panel found that, in accordance with paragraph 2(1)(d) of the Code, the requirement in paragraph 6(1)(a) for the Councillor not to bring his office or authority into disrepute applied, regardless of the fact that he was acting in a personal capacity. As the comments were made in a private capacity and did not comprise political expression, they did not attract the enhanced protection afforded to politicians under the ECHR. However, the Panel

concluded that even if enhanced protection had applied, the comments were so extreme and egregious that a finding of a breach of paragraph 6(1)(a) of the Code would nevertheless have been justified.

## 2 General obligations under the Code of Conduct

- 2.1 It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

### Equality See paragraph 4(a)



Promote equality;  
avoid discrimination

- 2.2 **You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.
- 2.3 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.



- 2.4 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.
- 2.5 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.
- 2.6 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 authority 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 5

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### Example 6

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy, and the wide dissemination of private medical information and speculation about the

progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) (equality of opportunity) of the Code.

### Treating others with respect and consideration

See paragraph 4(b)



Political comments can attract Article 10 rights

- 2.7 When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.
- 2.8** Article 10 of the (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.
- 2.9** Your freedom of expression as an elected member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.
- 2.10** “Political” comments are not confined to those made within a council chamber and, for example, include comments members may generally make on their authority’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

- 2.11 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, 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.
- 2.12 Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.
- 2.13 When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### **Example 7**

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

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

### **Example 8**

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

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

### **Example 9**

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession of her rented council property, sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing,

the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

### Example 10

At a meeting purportedly arranged to discuss Cabinet matters, the Leader of a County Borough Council instead took the opportunity to challenge the performance of the Council's Chief Executive. He did this in front of another member of the Council and members of the Council's management team, who were subordinate to the Chief Executive. The Adjudication Panel noted the Leader made no attempt to abide by the Council's protocol covering member / officer relations. He did not give the Chief Executive any indication prior to the meeting that he intended to raise performance issues. The Panel concluded that the Leader's conduct towards the Chief Executive was inappropriate and hectoring and amounted to a failure to show respect and consideration, in breach of paragraph 4(b) of the Code).

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



Consider your conduct from  
the other person's perspective

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

### 2.14 Harassment is repeated behaviour which upsets or annoys people.

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

### 2.15 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.

### 2.16 You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) (respect and consideration) 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.

- 2.17 The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.
- 2.18 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.
- 2.19 The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 11**

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



and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

### Example 12

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

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



**2.20 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 ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

- 2.21 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.
- 2.22 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 13

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

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

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

### Example 14

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

### Disclosing confidential information See paragraph 5(a)



**2.23 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.

- 2.24 The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked 'confidential'. On other occasions, this will not be the case, but you must not disclose them even if they are not marked as confidential. If you are in any doubt, always ask your Monitoring Officer.
- 2.25 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.
- 2.26 I expect information provided to members during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

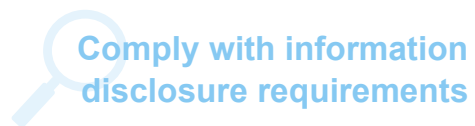
### **Example 15**

A member of a County Borough Council who sat on the Council's adoption panel disclosed to a third party details of a person who had applied to the panel to adopt a child and the outcome of the application. He could only have become aware of the information he disclosed by virtue of his membership of the panel. The Adjudication Panel found that the member had disclosed confidential information in breach of the Code.

### Example 16

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

### Preventing access to information See paragraph 5(b)



#### **2.27 You must not prevent any person from accessing information which they are entitled to by law.**

2.28 This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Monitoring Officer.

2.29 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.

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

### Example 17

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's 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.

### Disrepute See paragraph 6(1)(a)



- 2.31 You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your authority as a whole. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer, as this may also constitute disrepute (see also paragraph 6(2)).
- 2.32** When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Leader, an Executive Member of Committee Chair, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their authority into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their authority into disrepute.

- 2.33 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.
- 2.34 Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.
- 2.35 You must also conduct yourself in an appropriate manner with others within the confines of your authority's building, regardless of whether your conduct is likely to be in the public domain.

### **Example 18**

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

### **Example 19**

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The

Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code

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



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

### Reporting breaches of the Code See paragraph 6(1)(c)



**2.37 If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

**2.38** In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible.

**2.39** Your Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your Monitoring Officer may suggest that the matter would be more appropriately dealt with through the authority's local resolution process.



- 2.40 In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.
- 2.41 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.
- 2.42 In determining whether to investigate a complaint of a breach, I will use the two-stage test that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.
- 2.43 To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### Vexatious complaints See paragraph 6(1)(d)



- 2.44 **You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.**
- 2.45 You must not make complaints against other members, your authority's officers or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and



where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

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

2.47 The Code should not be used by members to pursue their political or private differences. You should therefore avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about, , for example, when you may disagree with a member's approach to your authority's business or their role as member. Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as a member into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

### Example 20

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

## Co-operating with investigations See paragraph 6(2)



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

**2.49** I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

**2.50** However much you may be concerned about allegations that you or a fellow member 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.

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

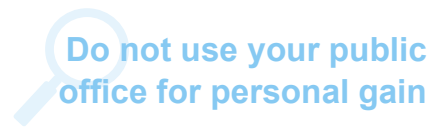
### **Example 21**

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

### **Example 22**

During the course of an investigation into alleged inappropriate messages posted on Facebook by a Community Councillor, the member concerned failed to provide information to my office about historic changes made to the privacy settings on his account. He claimed to not know how to do so, and did not respond when sent advice by my office on how to access his activity log. The Adjudication Panel found the member had been less than candid about his ability to check any change of settings on his account, when he was clearly an experienced user of Facebook. The Panel found the Councillor had deliberately avoided providing information and full and frank responses to the reasonable requests of my office, in breach of paragraph 6(2) of the Code.

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



- 2.52 **You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times** and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.
- 2.53 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.
- 2.54 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.

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

### Example 23

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

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

### Example 24

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) (respect and consideration) and 6(1)(a) (disrepute) of the Code.

### Example 25

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

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



- 2.55 You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from officers), 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.
- 2.56** You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

### Using resources for proper purposes only

See sub-paragraphs 7(b)(v) and (vi)

Do not use resources for private or political purposes

- 2.57 **You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your authority, for example, your authority's Information Security Policy.
- 2.58 You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.
- 2.59 Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

#### Example 26

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



### Example 27

A member of a County Borough Council was found by the Adjudication Panel to have breached the Code by using his council-issued mobile phone excessively for private purposes. Whilst limited personal use was permitted under the Council's IT policy, a bill in excess of £1000 was incurred in respect of private calls which the member had made.

### Reaching decisions objectively See paragraph 8(a)



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

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

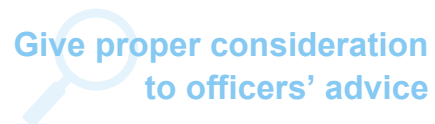
**2.62 Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision,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



- 2.63 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.
- 2.64 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)



- 2.65 **You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your authority.** You must have regard to all of the advice you receive from your authority's officers, especially advice from the Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Legal Officer, where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. This is a complex area and there are provisions within other legislation which underpin it but, in general, it goes well beyond a requirement to simply consider and reject advice if it is not welcome.
- 2.66 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.
- 2.67 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.

- 2.68 It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice
- 2.69 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.
- 2.70 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.
- 2.71 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.
- 2.72 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 28

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

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

### Expenses See paragraph 9(a)



- 2.73 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 29

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)



**2.74 It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your authority. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

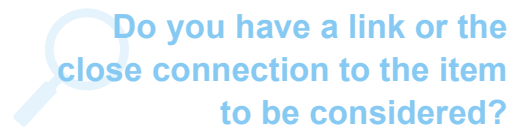
## 3 Personal and prejudicial interests

- 3.1 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.
- 3.2 Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.
- 3.3 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.

3.4 To provide some further assistance, I have attached two flowcharts at Appendix 2 and 3 which Ceredigion County Council's former Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.

3.5 Guidance on registering interests is at Section 4.

### Personal Interests See paragraph 10



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

3.7 Listed below are some questions that you should ask yourself when deciding if you have an interest:

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

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

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area

5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
  6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
  7. any land let by your authority to a firm in which you are a partner, paid director or a body (as set out in 4, above)
  8. any body to which you've been elected, appointed or nominated by your authority
  9. any of the following in which you have membership or hold a position of general control or management:
    - public authority or body exercising functions of a public nature
    - company, industrial and provident society, charity or body directed to charitable purposes
    - body whose main role is influencing public opinion or policy
    - trade union or professional association
    - private club, society or association operating in your authority's area
  10. any land in your Council's area which you have a license to occupy for at least 28 days
  11. any person with whom you have a close personal association.
- 3.9 It is always safer to declare an interest, however, if in doubt, consult your Monitoring Officer.

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



Will your well-being or that of a close associate be effected?

- 3.10 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.
- 3.11 Examples of decisions of this kind include, but are not limited to, 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 also 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”?



Does the body carry out a public service?

- 3.12 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?

- 3.13 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?



Is your quality of life affected?

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

### Who is a close personal associate?



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

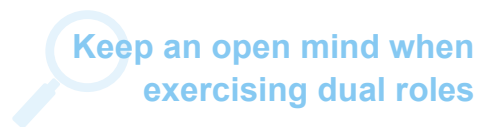
- 3.15 Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community. It also does not include a person, such as a close relative, with whom you have become estranged and it would be unreasonable for you to have knowledge of their business or other interests, or the potential impact on their well-being of a matter considered by your authority.
- 3.16 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?

- 3.17 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



- 3.18 If you are a member of both a community council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.
- 3.19 If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.
- 3.20 Obviously, if the planning application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 30

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### Example 31

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

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



Disclose what you know

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

### What to do when you have a personal interest

See paragraph 11



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

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

3.23 If you are attending a **meeting**,<sup>10</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

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

- 3.24 If you are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.
- 3.25 Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.
- 3.26 **Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.
- 3.27 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.
- 3.28 If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.
- 3.29 If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 32

A Leader of a County Borough Council was present at, and participated in, an inter-agency meeting arranged to discuss locally controversial proposals to provide residential accommodation for young children, potentially with behavioural difficulties, in a property neighbouring his home. The Leader participated in the meetings despite having received advice, from the Council's Monitoring Officer and Chief Executive, that he had a prejudicial interest and should not do so.

The Adjudication Panel found the Leader had a personal interest (which was not contested) and prejudicial interest in the proposal due to the proximity of the property to, and the potential detrimental impact on the value of, the Leader's home. The Panel found that despite saying he was compromised during the course of the inter-agency meeting, the Leader did not disclose a personal interest at the start of the meeting, in breach of paragraph 11(1) of the Code; and did not withdraw from the meeting, in breach of paragraph 14(1)(a). In playing an active role and making representations at the meeting, the Leader attempted, inappropriately, to influence decisions about the proposal in breach of paragraphs 14(1)(c) and (e). In reaching this conclusion, the Panel commented that a decision about any business of the authority for which a member has a prejudicial interest does not need to be a formal decision of the authority that is subject to a vote or to committee approval or other formal process. There are a range of decisions that can be made about a matter. The Panel found that the comments made by the Leader at the meeting were capable of influencing others and any decision made on the proposal, including by the agency proposing to operate the children's home.

The Panel also found that, as a consequence of his prejudicial interest in the matter, the Leader should not have sent an email to the Director of Social Services about the proposal after the inter-agency meeting, in breach of paragraph 14(1)(d). Nonetheless, in doing so, he failed to disclose his personal interest in that email as required by paragraph 11(2)(a) and sought to influence a matter for which he had a prejudicial interest, in breach of paragraph 14(1)(c).

The Panel found that in involving himself in the way that he did, the Leader could reasonably be regarded as bringing his office and the authority into disrepute, in breach of paragraph 6(1)(a).

### Example 33

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

### Prejudicial Interests See paragraph 12

#### Do I have a prejudicial interest?

Do not be swayed by what you think – consider what a reasonable member of the public would think?

3.30 Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest and:

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

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



- 3.31 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.
- 3.32 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.
- 3.33 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.
- 3.34 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.
- 3.35 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 Council 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.**

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

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



**Are you exempted from having a prejudicial interest?**

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

3.38 The business relates to:

- another relevant authority (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school
- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school that child attends



- decisions about statutory sick pay, if you receive or are entitled to receive it from your authority
- an allowance, payment or pension for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

3.39 These exemptions will **not** apply where the business you are considering is about determining an approval, consent, license, permission or regulation (see paragraph 12(3)). I consider these descriptions to refer to a narrow category of decisions, such as granting planning consent and licensing decisions. A wider interpretation of approval, for example, would cover almost every aspect of your authority's business and was clearly not intended.

3.40 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 34

Two members of a County Borough Council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation, one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests. The other member had, despite receiving advice on the declaration of interests, falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of paragraphs 11 (disclosure of interests) and 14 (participation in relation to a disclosed interest) of the Code to be serious ones.

### Example 35

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.**

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

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

3.42 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



- 3.43 If you have a prejudicial interest in any aspect of your authority's business you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.
- 3.44 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.
- 3.45 **Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).
- 3.46 **This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.
- 3.47 In addition, **you must not seek to influence a decision in which you have a prejudicial interest**. This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's

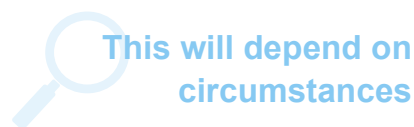
advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

### Example 36

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


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

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



3.48 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?




You have the same rights as a member of the public

3.49 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.

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

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



You must withdraw at the earliest opportunity, unless permitted to make representations

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

3.52 If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately when the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?



You may influence other members simply by being present

3.53 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be

perceived to be capable of influencing the decision-making process. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 37

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

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



- 3.54 If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.
- 3.55 This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

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



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

#### Example 38

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

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

### Executive or cabinet roles



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

3.57 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.

3.58 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.

3.59 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.

3.60 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 could be granted a dispensation to speak and / or vote on a matter**

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

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

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests



- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion)
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business is being considered by an overview or scrutiny committee and you do not have a pecuniary interest
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your authority's area
- the Committee considers it otherwise appropriate in all the circumstances. When introducing this last category of dispensation in 2016, the Welsh Government suggested, for example, that where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation under this category may enable the member to remain present in a meeting without participating in the business. This does not though limit the scope of this category of dispensation.

3.63 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.

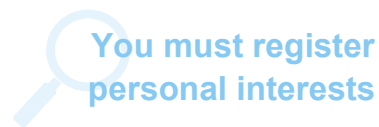
3.64 Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably 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.

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

#### 4 Registration of Personal Interests

See paragraph 15

Key points



- 4.1 All members of relevant authorities have to provide a record of their personal interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.
- 4.2 You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

4.3 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.

4.4 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.

4.5 The categories of personal interest set out in paragraph 10(2)(a) of the Code that you must register include:

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

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

### Sensitive information See Paragraph 16

#### Key points

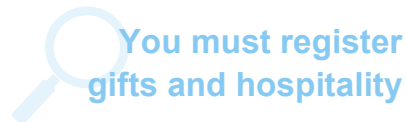


- 4.6 You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.
- 4.7 'Sensitive information' is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).
- 4.8 You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

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

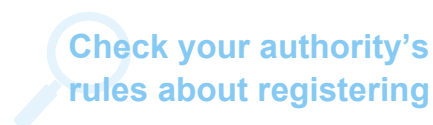
### Gifts and hospitality See Paragraph 17

#### Key points



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

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



- 4.12 You should ask yourself, "would I have been given this if I was not a member of the authority?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.
- 4.13 You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

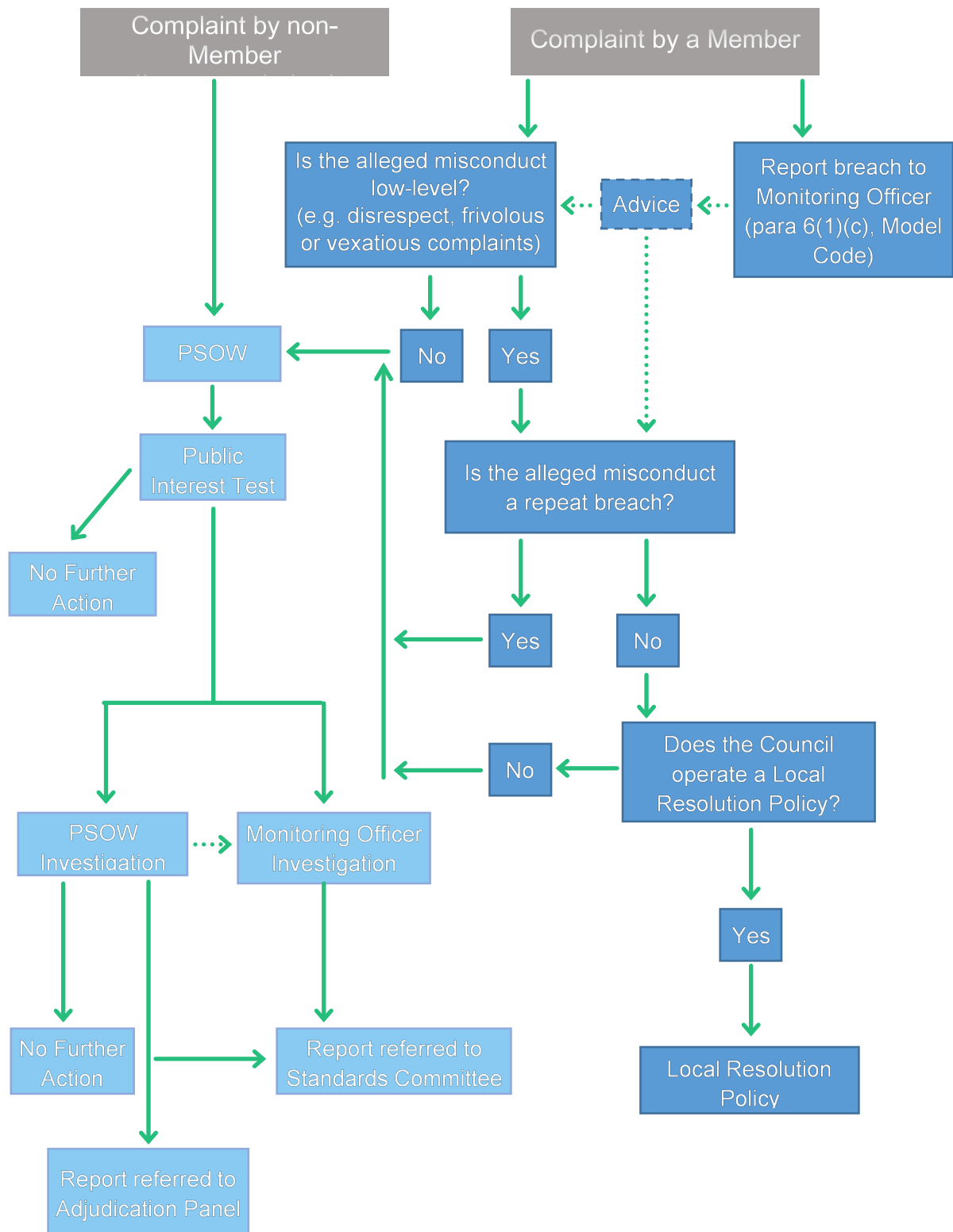
### What if I do not know the value of a gift or hospitality?



Make a reasonable estimate,  
if in doubt, register it

- 4.14 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.
- 4.15 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.

### Code of Conduct Complaints Overview



\* Note: an officer considering a complaint should take advice from the Council's Monitoring Officer / Clerk about the relevance of the Council's member / officer relations policy, or local resolution policy, before exercising their right to complain to the Public Services Ombudsman for Wales.

### Personal Interests

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

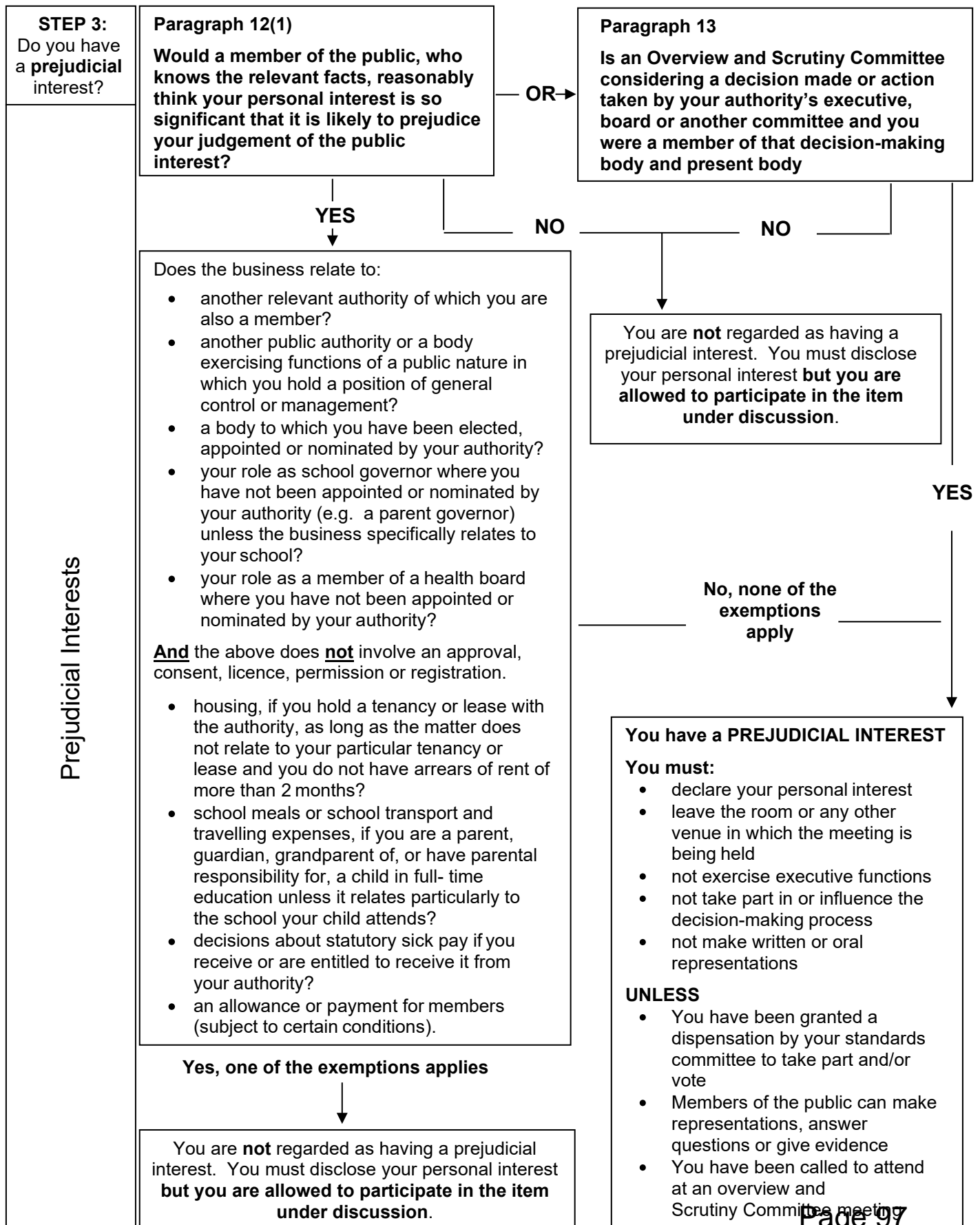
<b>STEP 1</b> Does the Code apply?	<b>Are you:</b> <ul style="list-style-type: none"><li>conducting the business of your authority?</li><li>acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority?</li><li>acting as your authority's appointee or nominee on any other body without its own code of conduct?</li></ul>		
<b>STEP 2</b> Do you have a personal interest?	The Code <b>does</b> apply. Continue to Step 2.	← YES NO →	The Code <b>does not</b> apply. No further action required.
Personal Interests	<b>Paragraph 10(2)(a)</b> <b>Does the business relate to or is it likely to affect:</b> <ol style="list-style-type: none"><li>your employment or business?</li><li>your employer, firm or company?</li><li>any person, other than your authority, who has paid towards your election or expenses as a member?</li><li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li><li>any contract that your authority makes with your company or a company in which you hold shares? (as described in 4)</li><li>any land in which you have an interest?</li><li>any land let by your authority to your company? (as described in 4)</li><li>any body to which you have been elected or appointed by your authority?</li><li>any:<ul style="list-style-type: none"><li>public authority or body exercising functions of a public nature?</li><li>company, industrial and provident society, charity or body directed to charitable purposes?</li><li>body whose main role is influencing public opinion or policy?</li><li>trade union or professional association?</li><li>private club, society or association operating in your authority's area</li></ul></li><li>in which you have membership or are in a position of general control or management? or</li><li>any land in your authority's area which you have a license to occupy for at least 28 days?</li></ol>	OR	<b>Paragraph 10(2)(c)</b> <b>Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area):</b> <ul style="list-style-type: none"><li>your well-being or financial position?</li><li>the well-being or financial position of any person who lives with you or with whom you have a close personal association?</li><li>the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association?</li><li>any company in which any person who lives with you or with whom you have a close personal association owns shares?</li><li>any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.</li></ul>
	<b>If YES, you have a PERSONAL INTEREST</b>		<b>If NO, you do not have a personal interest</b>
	<b>You must:</b> <ul style="list-style-type: none"><li>declare your interest and the nature of that interest:<ul style="list-style-type: none"><li>at meetings</li><li>when making written representations</li><li>when making oral representations (and confirm it in writing within 14 days)</li><li>consider if you have a prejudicial interest (see Appendix 3)</li></ul></li></ul>		<ul style="list-style-type: none"><li>If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest</li><li>Otherwise, <b>no further action is required</b></li></ul>

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### Prejudicial Interests

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



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<http://www.ombudsman.wales>

# **The Code of Conduct**

## for members of local authorities in Wales

**Guidance from the  
Public Services Ombudsman for Wales**  
for members of community and town 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 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.<sup>2</sup>

This version of my guidance is aimed at community and town councillors (referred to throughout this guidance as community councillors). It differs in parts from my separate guidance to county councillors and members of other relevant authorities, as it recognises and is tailored to the different nature of the role that community councillors undertake in their communities.

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

Where councillors, clerk and chair of the council work together effectively as a team, they combine energies and skills to deliver real benefits to the community they serve. Good working relationships, mutual respect and an understanding of their different roles are vital. Conflict between these key players, especially during meetings in front of the press and public can damage the council and undermine its relationship with the people served by the council.

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

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

This guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement, including the powers of sanction available to standards committees and the Adjudication Panel for Wales. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your Council 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 and to make a decision as to the most suitable course of action. The Monitoring Officer of the principal council<sup>3</sup> for the area will also be able to provide advice if the matter is complex and your Clerk is unable to do so.

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging.

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

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

---

<sup>3</sup> A county or county borough council in Wales

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

Despite a recent reduction in the number of complaints I have received about community councillors, I continue to be concerned about the number of low-level, tit-for-tat complaints which border on frivolity, or which are motivated by political rivalry or clashes of personality, rather than true Code of Conduct issues. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest. I take a very dim view of complaints of this nature and have, where appropriate, advised members that making a complaint which is frivolous, vexatious or malicious is itself a breach of the Code.

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 in all of our communities.

During the course of my review of this guidance, the Welsh Government announced that it was commissioning a review of the local government ethical framework. My team and I look forward to contributing to that review and I will revisit this guidance in light of its outcome, when known.

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a stylized flourish at the end.

Nick Bennett  
Public Services Ombudsman for Wales  
May 2021

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

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

## **Acknowledgement**

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 May 2021.

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## 1 Introduction

- 1.1 The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>4</sup> which all relevant authorities were required to adopt.<sup>5</sup>
- 1.2 For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>6</sup>
- 1.3 Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.
- 1.4 Standards committees of principal councils are required to assist members and co-opted members of community and town councils in their area to observe the Code, and to arrange for advice and training to be provided. Such training may be provided by Monitoring Officers or by One Voice Wales, the representative body for community and town councils in Wales. One Voice Wales has developed bespoke training on the Code tailored to the needs of community and town council members, which has been endorsed by local authority Monitoring Officers. **I expect all members to attend training and take advice on conduct matters where it is offered.**

<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>5</sup> Local Authorities (Model Code of Conduct) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>6</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

- 1.5 Section 67 of the Local Government and Elections (Wales) Act 2021, which comes into force on 5 May 2022, places a duty on community and town councils to prepare a training plan for their members and officers. This will provide the means for identifying training needs and opportunities, including on the Code of Conduct.
- 1.6 Sanctions guidance issued by the President of the Adjudication Panel for Wales (“the Adjudication Panel”) indicates that a refusal, or failure, to attend training on the Code will be regarded by its tribunals as an aggravating factor when assessing the sanction to be applied to a member found to have breached the Code.
- 1.7 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 new councillors as early in their term of office as possible and all councillors should undertake refresher training from time-to-time.
- 1.8 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 are contrary to relevant advice from your Council’s Clerk or other officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

## Investigations: Assessing the Public Interest

1.9 It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

1.10 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 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.

1.11 Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has previously been found to have breached the Code by a standards committee or the Adjudication Panel for Wales
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales

- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

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

### Legal Precedents

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

1.14 In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local Standards Committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors,

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

the finding of a breach in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel's decision was, therefore, set aside.

- 1.15 In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member's office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.
- 1.16 One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician's right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.
- 1.17 I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

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

- 1.20 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. In some cases, the arrangements also cover complaints made about members by officers. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints.
- 1.21 Local resolution can also play an important role within community and town councils where, all too, often low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a ‘Model Local Resolution Protocol for Community and Town Councils’ to support councils in resolving minor disputes between members and between members and officers, in a way which is proportionate to the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.
- 1.22 Typically, complaints which can be dealt with through local resolution 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 Clerk for consideration under the local resolution protocol, where this has been adopted by the Council. 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.

1.23 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 Council and the Council's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Clerk 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.

1.24 When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

1.25 An overview of the complaints process is at Appendix 1 to this guidance.

### Standards Committee

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



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

1.28 When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant 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
- the member or co-opted member should be suspended or partially suspended from being a member of that council for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

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

1.30 The Local Government and Elections (Wales) Act 2021 places new duties on the standards committee of a county and county borough council in Wales, with effect from 5 May 2022. The committee will have the additional function of monitoring and providing support to political group leaders within principal councils in undertaking their new duty, under the 2021 Act, to promote high standards of conduct by members of their group. Each standards committee will also be required to make an annual report to their authority describing how the committee's functions have been discharged and providing an overview of conduct matters generally within the authority. The 'Explanatory Notes' to the 2021 Act indicate that the requirement on a principal council's standards committee to make a report includes a requirement to make a report to any community and town councils in its area.

## Adjudication Panel for Wales

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

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

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

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

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

- 1.35 Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).
- 1.36 Further information about the role and procedures of the Adjudication Panel and its tribunals, including guidance on sanctions, can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Role of the Clerk

- 1.37 The Clerk is employed by your Council and undertakes a number of tasks including providing administrative support to the Council, advising on the development and implementation of policies and procedures and taking action to implement the Council's decisions. The Clerk has a complex role which may entail having to act as a project manager, personnel director, public relations officer and finance administrator. The Clerk acts in a supporting role for you and your fellow councillors and is the person you should turn to in the first instance if you need any advice. The best councils will have a Clerk and councillors who work as a team within a culture of mutual respect and consideration to serve their community. The Clerk is not just a secretary and is not at the beck and call of the Chair or individual members of the Council; the Clerk is answerable only to the Council as a whole. Whilst you may question the advice you are given by the Clerk, you must do so in a constructive and objective manner.
- 1.38 The Clerk will be able to advise councillors on relevant legislation, including matters relating to the Code and the Council's standing orders. The Clerk will work closely with the Chair of the Council 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. If necessary, Clerks may approach the relevant principal council's Monitoring Officer (see below) for advice.
- 1.39 The Clerk also plays an important role in facilitating the operation of the Model Local Resolution Protocol, where adopted, in conjunction with the Chair or Vice Chair of your Council.

1.40 The Clerk is an employee of the Council and is not required to abide by the Code. However, the Clerk and other Council employees are subject to a separate code of conduct set out in the 'Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001'. Under Section 82 of the Local Government Act 2000, the terms and conditions of appointment of the Council's employees are deemed to incorporate this Code. Any issues regarding the performance of the Clerk or other employees are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of your Council's employees; this is a matter for the Council as the employer.

### The Role of the Monitoring Officer

1.41 The Monitoring Officer is employed by the principal council for the area. Among other things, the Monitoring Officer has an important role in ensuring the lawfulness and fairness of decision-making by the principal council. The Monitoring Officer also contributes to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee and members of the Council.

1.42 Monitoring Officers endeavour to provide support and guidance to community and town councils on matters of conduct, which may include the provision of training. However, this can have significant resource implications, particularly in areas with high numbers of community and town councils, and 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 or you need assistance with a more complex query.

### The Principles

1.43 The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these Principles which are designed to promote the highest possible standards. These Principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report "Standards in Public Life". Three more were added to these in the local

government principles in Wales: a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others.

1.44 Members of community and town councils 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 Council, and which will give your communities confidence in the way that your Council is governed.

1.45 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. Paragraph 2(2) of the Code states that you should read it together with the Principles, which are prescribed in a separate statutory instrument<sup>8</sup>. For ease of reference, they are replicated below.

### **1. Selflessness**

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

### **2. Honesty**

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

### **3. Integrity and Propriety**

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

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<sup>8</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.

- 1.46 The Code is consistent with, and provides for the practical application of, these Principles. The Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**. Given the close association between the Principles and the Code, if you follow the Principles as a basis for your conduct, you are less likely to behave in a way that will constitute a failure to comply with the Code.

#### Deciding when the Code applies to you See paragraphs 2 and 3



- 1.47 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, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the Code apply to you at all times.
- 1.48 When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time. Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

### When does the Code apply?

1.49 The Code applies:

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your Council (paragraph 2(1)(a)-(c)).
- **At any time**, if you conduct yourself in a manner which could **reasonably** be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your Council's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

1.50 **Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)). When you are nominated by your 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.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

1.51 **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 (paragraph 3(b)).

1.52 If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even



if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

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

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

### **Example 1**

A complaint was received that a councillor was intoxicated and behaving inappropriately at a street party. It was established that the councillor did not have to undertake any action on behalf of the Council at the party. In my view, therefore, 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 only paragraph 6(1)(a) (disrepute) of the Code applied at the time. 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 was not indicative of a breach of paragraph 6(1)(a). I did not investigate this complaint.

### **Example 2**

Whilst acting in a personal capacity, a member of a county council was convicted of criminal offences relating to a failure to maintain accurate animal records and the disposal of animal carcasses. The Standards Committee determined that, due to the seriousness of the convictions, the member had brought the authority into disrepute in breach of paragraph 6(1)(a).

## Example 3

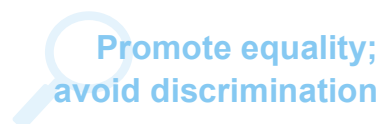
A Community Councillor, whilst acting in a personal capacity, posted a number of messages on Facebook about high-profile politicians which the Adjudication Panel found were extreme, threatening and which promoted violence towards the subjects of the messages. The Panel noted that whilst politicians were expected to possess “thick skins” and display a greater tolerance than ordinary citizens, such tolerance should not have to extend to personal, inflammatory and egregious comments such as those that had been posted. The Panel found the comments were not ‘political expression’, which might be afforded protection under the ECHR, and were sufficiently serious in nature as to bring the office of member and the Council into disrepute in breach of paragraph 6(1)(a).

The Panel found that, in accordance with paragraph 2(1)(d) of the Code, the requirement in paragraph 6(1)(a) for the Councillor not to bring his office or authority into disrepute applied, regardless of the fact that he was acting in a personal capacity. As the comments were made in a private capacity and did not comprise political expression, they did not attract the enhanced protection afforded to politicians under the ECHR. However, the Panel concluded that even if enhanced protection had applied, the comments were so extreme and egregious that a finding of a breach of paragraph 6(1)(a) of the Code would nevertheless have been justified.

## 2 General obligations under the Code of Conduct

- 2.1 It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

### Equality See paragraph 4(a)



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

This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

2.3 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.

2.4 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.

2.5 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.

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

### **Example 4**

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) (equality of opportunity) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### **Example 5**

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

## Treating others with respect and consideration

See paragraph 4(b)

Political comments can attract Article 10 rights

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

**2.8** Article 10 of the European Convention on Human Rights (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

**2.9** Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

**2.10** “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 a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

**2.11** 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 disenable them from carrying out their

duties or undermine public confidence in the administration. That said, officers who are in more senior positions, such as the Chief Executive of a principal council, will also be expected to have a greater degree of robustness. However, I am concerned about the number of complaints I have received which allege inappropriate behaviour by some community councillors towards their Council's Clerk. Given the very scale and nature of community and town councils, there is a distinction to be made about the role and status of a Chief Executive or other senior officer in a principal council and that of a Clerk. I will consider carefully any complaints of alleged inappropriate behaviour by members towards Clerks, and will investigate those complaints which are supported by appropriate evidence that a member has gone beyond what might be regarded as reasonable challenge.

2.12 Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

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

### Example 6

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

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

### **Example 7**

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out".

The Adjudication 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 his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

### **Example 8**

The Chair of a Community Council raised a complaint at a meeting of the Council that he had not seen the text of a letter prior to it being issued (as previously agreed) in his name by the Clerk. The Chair was unhappy with the content of the letter when he eventually saw it. It was alleged that it was inappropriate for him to have raised the matter, without notice, in a public forum and in doing so he had upset and publicly humiliated the Clerk.

A Standards Committee concluded that it was not inappropriate for the member to raise the issue in a public meeting so that his views could be publicly identified. The Standards Committee considered that his line of questioning and approach did not demonstrate a failure to show respect and consideration for the Clerk, but were intended to ensure that the Council's interests were protected and his concerns about the content of the letter were addressed. The Standards Committee, therefore, found no breach in relation to this aspect of the complaint.

(See paragraph 4(c) below for further examples)

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



Consider your conduct from  
the other person's perspective

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

**2.15** 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 9**

A Community Councillor disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. The Councillor 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. A Standards Committee found that the Councillor 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 the Councillor breached paragraphs 4(b) (respect and consideration), 7(a) (improper use of position) and 6(1)(a) (disrepute) of the Code.

### Example 10

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

- 2.16 You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) (respect and consideration) of the Code, very senior officers within principal councils can be involved in robust discussion with members and be well placed to put their own point of view forcefully. However, the same is not

necessarily true of the Clerk in the context of community and town councils 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.

- 2.17 The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.
- 2.18 Your Council should have an appropriate mechanism 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.
- 2.19 The Adjudication Panel for Wales and standards committees have made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 11**

During the discussion of an unrelated matter, a member of a Community Council raised in a public meeting of the Council questions about the Clerk which were personal and focused on the Clerk's remuneration, expenses, hours worked and other occupations. This was in contravention of the Council's standing orders, which provided that any questions relating to, among other things, the appointment, conduct and remuneration of any person employed by the Council should not be considered until the Council had decided whether or not the press and public should be excluded.

A Standards Committee found that it was not appropriate for the member to have raised the matter, which should have been considered in private, in a public meeting. The Standards Committee concluded that the member had caused the Clerk embarrassment and upset and had demonstrated a lack of respect and consideration for her, in breach of paragraph 4(b) of the Code. The action by the member was not a sustained course of conduct, but a one-off event directed at an individual in a weaker position of power. As such, it could also reasonably be regarded as bullying, in breach of paragraph 4(c) of the Code.

### Example 12

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

### Example 13

I received a complaint that a member of a Town Council had acted in a disrespectful and bullying manner towards the Council's Clerk when questioning the accuracy of minutes and advice given at meetings of the Council. Witnesses were divided on whether the member's manner could be described as argumentative and obstructive, or plain talking and

professional, but the general consensus was that he communicated with everyone in this way and did not appear to be doing so only to the Clerk.

- 2.20 It is not my role to inhibit robust political debate. Following my analysis of the evidence, I was not persuaded that there was evidence to suggest that the content of the discussions at the meetings was inappropriate. There was no evidence of behaviour which was personal, rude or abusive towards the Clerk. I was also not persuaded that the tone and content of the emails which concerned Council business, although challenging and questioning at times, would amount to disrespectful or bullying behaviour. I, therefore, concluded that no action needed to be taken.

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



#### 2.21 **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 ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code, which may affect your ability to participate in some matters being considered by the Council (see section 3 of this guidance).

- 2.22 You can legitimately question officers in order to understand, for example, their reasons for proposing the Council acts in a particular way or to clarify the content of a report they have written. However, you must not try to force them to act differently, change their advice, or alter the content of a report, if doing so would prejudice their professional integrity and neutrality.

### Hypothetical Scenario

- 2.23 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. A Councillor's father had been waiting for an allotment for almost seven years.
- 2.24 The Councillor 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. The Councillor 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. The Councillor 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. I would regard this as indicative of a breach of paragraph 4(d) of the Code.

### Example 14

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

## Disclosing confidential information See paragraph 5(a)



**2.25 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.**

**2.26** The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a community councillor you may have sight of information of a confidential or sensitive nature, such as personal or commercially sensitive information. 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 should be regarded as confidential. You should always confirm (where possible obtain an agreement in writing) that you have the person's 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 15**

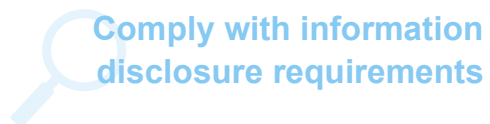
Community Councillor S received an email from another councillor regarding the employment of the caretaker, which was marked 'confidential'. Councillor S disclosed the email to the caretaker's wife and information in the email was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that this was indicative of a breach of paragraph 5(a) of the Code by Councillor S.

### Example 16

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

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

### Preventing access to information See paragraph 5(b)



- 2.28 **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.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Clerk.
- 2.29 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 or other person dealing with the information request when asked, you will be in breach of the Code.



2.30 Your Council needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to the person dealing with the information request 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 17

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

**Disrepute**  
See paragraph 6(1)(a)

Any conduct unbecoming of a member can constitute disrepute

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

2.32 When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Chair of a Council, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour



by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their council into disrepute.

2.33 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.

2.34 Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

### **Example 18**

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

### **Example 19**

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 email exchange, the Councillor told her that she had “[failed] to take ANY responsibility for

allowing your 10yr old child 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 Adjudication Panel found the member had failed to show respect and consideration to the complainant through the use of inappropriate language and by making unfounded and serious allegations based his limited knowledge of the facts, in breach of paragraph 4(b). Through its aggressive tone, threatening nature and serious allegations contained in the email, the member has also brought the office of member into disrepute, in breach of paragraph 6(1)(a).

### Example 20

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

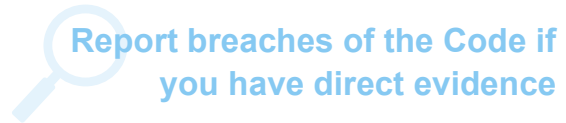
### Reporting criminal behaviour See paragraph 6(1)(b)



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

### Reporting breaches of the Code

See paragraph 6(1)(c)

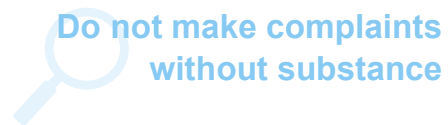


- 2.36 **If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer of the principal council.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.
- 2.37 In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should seek the advice of your Clerk or consult the Monitoring Officer as soon as possible.
- 2.38 The Clerk or Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or a technical one, or where there is no clear evidence that a breach occurred, your Clerk or Monitoring Officer may advise you of the likely threshold I will set in deciding whether an investigation is appropriate. In the most serious of cases the Clerk or Monitoring Officer may, as an exception, decide to refer matters to me directly or on your behalf. In most other cases, you will be advised to do so yourself.
- 2.39 If your Council has adopted the Model Local Resolution Protocol for low-level complaints, your Clerk or the Monitoring Officer may suggest that the matter would be more appropriately dealt with through that process. 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.
- 2.40 In determining whether to investigate a complaint of a breach, I will use the two-stage test which I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word

against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

- 2.41 To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### Vexatious complaints See paragraph 6(1)(d)



- 2.42 **You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

- 2.43 You must not make complaints against other members, your Council's officers 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 Council's local resolution process, if there is one in place.

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

- 2.45 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.

### Example 21

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

2.46 This aspect of the Code has been a particular problem within community and town councils. 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, I too have had concerns about the number of low-level, tit-for-tat complaints that are still being received from community councillors in particular.

2.47 Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and their councils and, more generally, can harm public confidence in our elected members. At the extreme, they can also have such an adverse impact on relations within the Council as whole as to render it incapable of conducting its business effectively. 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.

2.48 Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your**

**other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

2.49 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. They are not subject to the Code and I am required to consider each complaint on its own merit. However, it is unlikely that such complaints would pass my two-stage test and be accepted for investigation.

### Co-operating with investigations See paragraph 6(2)



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

2.51 I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant

could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

2.52 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.

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

### **Example 22**

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

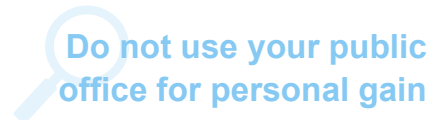
### **Example 23**

During the course of an investigation into alleged inappropriate messages posted on Facebook by a Community Councillor, the member concerned failed to provide information to my office about historic changes made to the privacy settings on his account. He claimed to not know how to do so, and did not respond when sent advice by my office on how to access his



activity log. The Adjudication Panel found the member had been less than candid about his ability to check any change of settings on his account, when he was clearly an experienced user of Facebook. The Panel found the Councillor had deliberately avoided providing information and full and frank responses to the reasonable requests of my office, in breach of paragraph 6(2) of the Code.

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



- 2.54 You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**
- 2.55** 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 and town 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.
- 2.56** 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.

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



### Example 24

A Councillor was a 'joint co-ordinator' of a community group. The Councillor did not notify the Council of her position in this group. She took part in the consideration of, and voted on, the decision to negotiate a new lease in respect of a workshop used by the 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 disclosed to the Council. She was found in breach of paragraph 7(a) of the Code.

### Example 25

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) (respect and consideration) and 6(1)(a) (disrepute) of the Code.

### Example 26

A member of a Town Council wrote to the Welsh Government indicating that an application for a loan in respect of a 'Community Hub' project, supported by the Council, should not go ahead as the matter was subject to further discussion. The correspondence was signed by the member using the title Deputy Mayor of the Council. As a consequence, the Welsh Government made further enquiries of the Council and required it to submit a further loan application, which resulted in further work and expense for the Council.

During the course of my investigation the member claimed the correspondence was sent in a personal capacity. It was an accepted fact that the Community Hub would include facilities which would be in direct competition with the business interests of the member. In my view, the Welsh Government was unlikely to have acted upon the member's communication had it not been under the impression that the author was representing the Council.

A Standards Committee considered that the communication was designed to have an impact on the project. Whereas some of the motivation may have been to protect the public interest, the Committee considered the member had gone about it in an inappropriate manner which gave the impression that he was acting in his own business interests. The Committee concluded that the member had attempted to use his position improperly to gain an advantage in breach of paragraph 7(a) of the Code.

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



Only use resources for lawful  
and permitted purposes

- 2.57 You must only use or authorise the use of the resources of the Council in accordance with its requirements and the law. These sub-paragraphs also apply 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.
- 2.58** You must be familiar with the rules made by your Council applying to the use of these resources. 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 sub-paragraphs 7(b)(v) and (vi)



Do not use resources for  
private or political purposes

- 2.59 You must make sure you use the Council's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the Council's resources, you must have regard, if applicable, to any guidance issued by your Council, for example, your Council's Information Security Policy.

### Example 27

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 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.

### Reaching decisions objectively See paragraph 8(a)



**2.60 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 consider the issues objectively.** During the decision-making process, you must act fairly and take proper account of the public interest.

**2.61** Most decisions taken by a community or town 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. 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.

**2.62 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)



**2.63 You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your Council.** You must have regard to all of the advice you receive from your Clerk or other officers of the Council. The Clerk is usually also the 'Proper Officer'<sup>10</sup> and it is part of their role to research the policy, guidelines and legislation relevant to advice given when taking decisions.

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

**2.65** 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.

**2.66** 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.

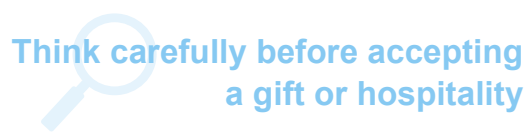
### Expenses See paragraph 9(a)



**2.67 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.

<sup>10</sup> The 'proper officer' is an officer appointed by the Council to exercise particular functions (ref: Section 270(3), Local Government Act 1972).

## Gifts and hospitality See paragraph 9(b)



**2.68 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. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

## 3 Personal and prejudicial interests

3.1 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.

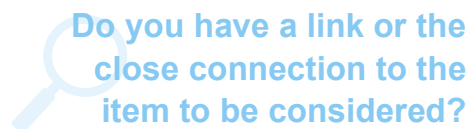
3.2 Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

3.3 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 consult your Clerk, who may be able to offer advice. The principal council's Monitoring Officer may be able to assist with more complex matters. However, their resources are limited and advice should be

sought in good time prior to a meeting at which the related business is to be considered. Ultimately, however, the decision on what course of action should be taken remains with you.

- 3.4 To provide some further assistance, I have attached a flowchart to this guidance at Appendix 2, 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.
- 3.5 Guidance on registering interests is at Section 4.

### Personal Interests See paragraph 10



- 3.6 **While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but 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.
- 3.7 Listed below are some questions that you should ask yourself when deciding if you have an interest:

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

- 3.8 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, above)
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, above)
8. any body to which you've been elected, appointed or nominated by your Council
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes
  - body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your Council's area
10. any land in your Council's area which you have a license to occupy for at least 28 days
11. Any person with whom you have a close personal association.

- 3.9 It is always safer to declare an interest. However, if in doubt, consult your Clerk or the Monitoring Officer of the principal council for the area, who may be able to offer advice subject to resource constraints.

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



Will your well-being or that of a close associate be effected?

- 3.10 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 the Council's area if it does not have multiple wards, you have a personal interest.
- 3.11 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”?



Does the body carry out a public service?

- 3.12 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?



- 3.13 When conducting community or town 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?



Is your quality of life affected?

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

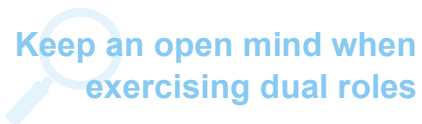
### Who is a close personal associate?



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

- 3.15 Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community. It also does not include a person, such as a close relative, with whom you have become estranged and it would be unreasonable for you to have knowledge of their business or other interests, or the potential impact on their well-being of a matter considered by your authority.
- 3.16 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 the Monitoring Officer of the principal council.

### “Twin hatted” members



- 3.17 If you are a member of both a community or town council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community or Town 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.
- 3.18 If you do so, you would be well advised to state at the Community or Town Council meeting that you would be looking at the matter afresh when you consider it at the Planning Committee 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 or Town Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.
- 3.19 Obviously, if the planning application was one submitted by the Community or Town Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 28

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk’s remuneration package. The member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member’s relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members’ ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

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

Disclose what you know

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

### What to do when you have a personal interest

See paragraph 11

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

- 3.21 When you have a personal interest in any business of your Council, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.
- 3.22 If you are attending a **meeting**,<sup>11</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your Council's Clerk. 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.
- 3.23 If you are making **written representations** (including by email, text etc) to a member or officer of your Council regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

<sup>11</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present, not just formal meetings of the council. For example, it can include an informal meeting of a member and officer.

- 3.24 Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.
- 3.25 **Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.
- 3.26 If the Monitoring Officer of the principal council for the area has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.
- 3.27 If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 29

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the

member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

### Prejudicial Interests See paragraph 12

#### Do I have a prejudicial interest?

Do not be swayed by what you think – consider what a reasonable member of the public would think

3.28 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 them are unlikely to apply to business undertaken by a community or town council.

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

Would a reasonable member of the public consider you impartial?

3.29 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.

3.30 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.

- 3.31 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.
- 3.32 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.
- 3.33 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 ward or Council area (if your Council 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.**
- 3.34 In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.
- 3.35 **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, 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 in relation to that body. If, on the other hand, you are on such a board in another 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



You must declare your interest  
and withdraw from the room

- 3.36 If you have a prejudicial interest in any aspect your Council's business you must not take part in the consideration of that business, or make representations about it, except in the circumstances described below.
- 3.37 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.
- 3.38 **Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).
- 3.39 **This is unless you have obtained a dispensation from the relevant standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If that the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your Council for this purpose. However, where you attend a meeting 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, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.



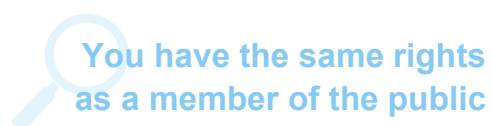
3.40 In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where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

### Example 30

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

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

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



3.41 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.

- 3.42 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. The Code also provides the right to submit written representations to the public meeting in these circumstances. You may not, however, take part in the discussion or observe the vote.

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

 You must withdraw at the earliest opportunity, unless permitted to make representations

- 3.43 You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.
- 3.44 If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately after the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

**What does influencing a decision mean?**

 You may influence other members simply by being present

- 3.45 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Clerk before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 31

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### Example 32

A Standards Committee found that a member of a Town Council with a personal and prejudicial interest sought to influence a decision about a project being considered by the Council, when he participated in a discussion at a Council meeting, in breach of paragraphs 14(1)(a) and (c) of the Code. It also found that the member's participation in the discussion constituted oral representations in breach of paragraph 14(1)(d); and he had made written representations to the Clerk and the Welsh Government in an attempt to derail the project, in breach of paragraph 14(1)(e).

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

 You can only make representations if the public can do so

- 3.46 If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.
- 3.47 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, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

### Example 33

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

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

## Dispensations

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

 **You could be granted a dispensation to speak and / or vote on a matter**

3.48 Standards committees have powers under regulations<sup>12</sup> made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

<sup>12</sup> Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001 No. 2279 (W.169)

3.49 You can apply in writing to the principal council's Standards Committee for a dispensation 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
- the Committee believes that your participation would be in the interests of the people in your Council's area
- the Committee considers it otherwise appropriate in all the circumstances. When introducing this last category in 2016, the Welsh Government suggested, for example, that where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation under this category may enable the member to remain present in a meeting without participating in the business. This does not though limit the scope of this category of dispensation.

3.50 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.

3.51 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.

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

#### 4 Registration of Personal Interests

See paragraph 15

Key points

You must register a personal interest that you disclose for the first time at a meeting or when making representations

- 4.1 Community and town councils are required to maintain and publish electronically a record of its members' interests in a public register of interests. It must also be available for public inspection at reasonable hours. This record is maintained by the 'Proper Officer', usually your Clerk.
- 4.2 Unlike members of principal councils and other relevant authorities, as a community councillor you do not need to register pecuniary and other interests set out in paragraph 10(2)(a) of the Code upon taking up office. However, you may find that your Council has adopted this requirement as a matter of good practice.
- 4.3 You must, however, register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your Council's Clerk. As indicated in the guidance on paragraph 11 of the Code, your Clerk will have arrangements in place for this. **Even when you have registered a personal interest, you must still disclose the existence and nature of the interest each and every time before you participate in any business to which it relates.**

- 4.4 Where you become aware of a change to a registered personal interest, you must register that change by providing written notice to your Clerk within 28 days.
- 4.5 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.
- 4.6 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.

### Sensitive information

See Paragraph 16



Discuss 'sensitive' information with the principal council's Monitoring Officer

### Key points

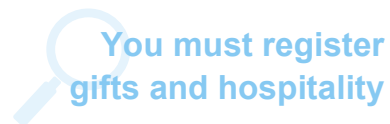
- 4.7 You may be exempt from having to disclose and register certain information in your Council's register of interests if the Monitoring Officer of the principal council for the area agrees that it is 'sensitive information'.
- 4.8 'Sensitive information' is information the disclose of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).
- 4.9 You should provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a

meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

- 4.10 If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Council's Clerk within 28 days asking them to include the information in the register.

### Gifts and hospitality See Paragraph 17

#### Key points



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

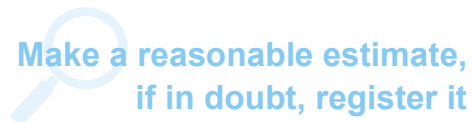
#### Is the gift or hospitality connected to my official duties as a member?



- 4.13 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.

- 4.14 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 (unless required to do so by your Council). 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 do so.

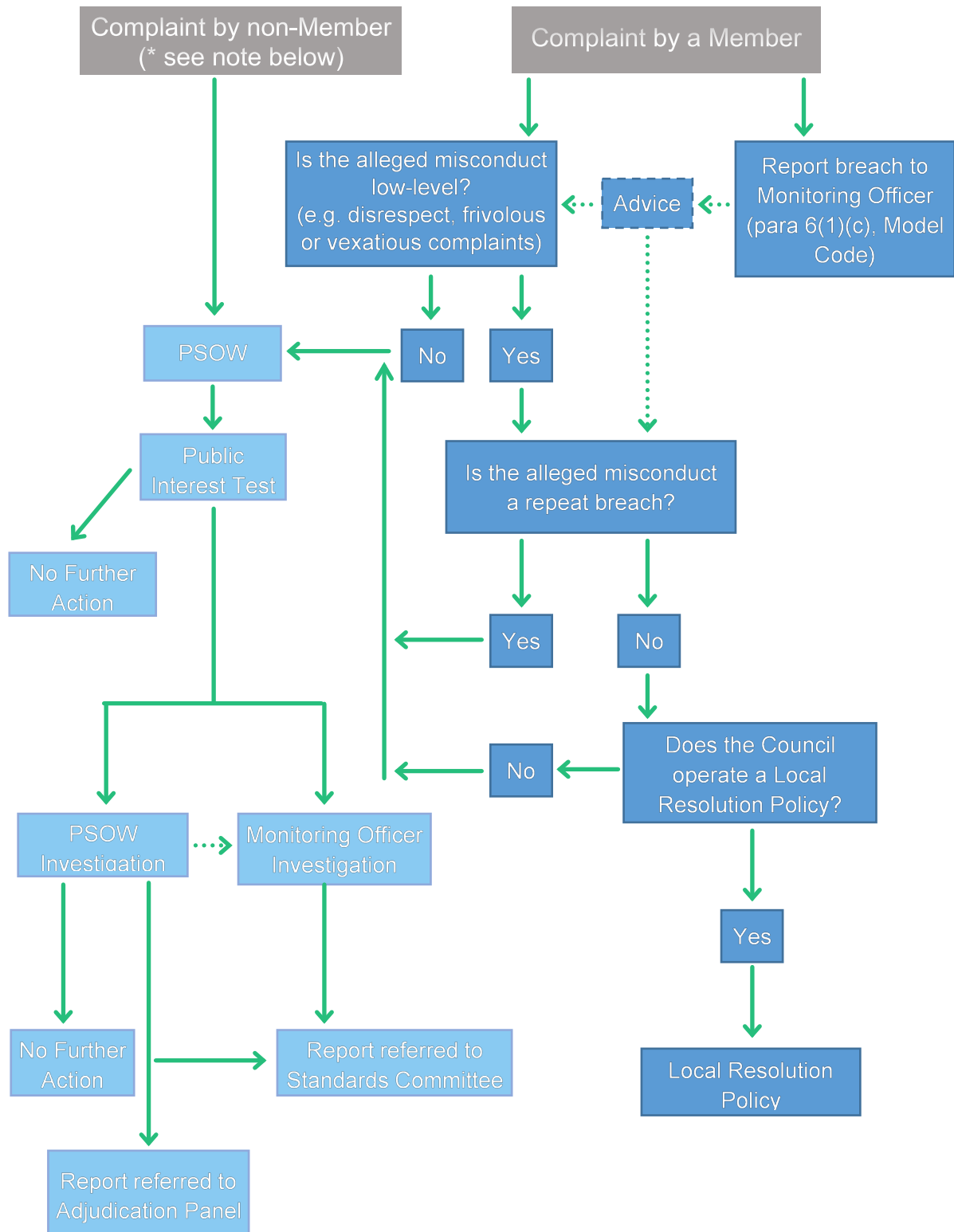
### What if I do not know the value of a gift or hospitality?



- 4.15 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.
- 4.16 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.
- 4.17 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.



### Code of Conduct Complaints Overview

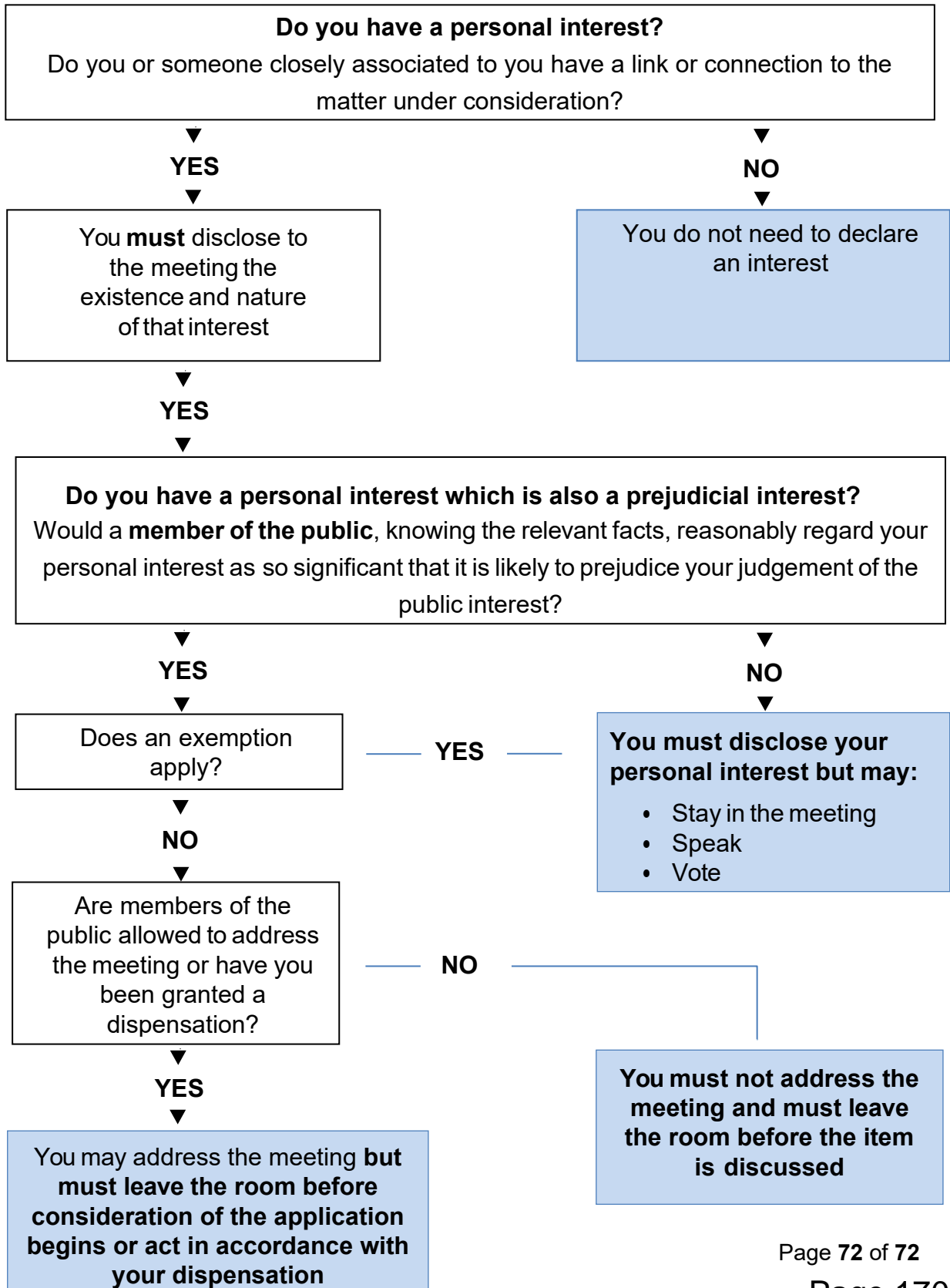


\* Note: an officer considering a complaint should take advice from the Council's Monitoring Officer / Clerk about the relevance of the Council's member / officer relations policy, or local resolution policy, before exercising their right to complain to the Public Services Ombudsman for Wales.

## Appendix 2

### Declaration of personal and prejudicial interests

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



## Contact us

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

Tel: 0300 790 0203  
Fax: 01656 641199  
Email: [ask@ombudsman.wales](mailto:ask@ombudsman.wales)  
Follow us on Twitter: @OmbudsmanWales

Further information about the service offered by the  
Public Services Ombudsman for Wales can also be found at  
<http://www.ombudsman.wales>

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## STANDARDS COMMITTEE 20/09/2021

<b>ADJUDICATION PANEL FOR WALES – CLLR DAVID POOLE</b>		
<b>Recommendations / key decisions required:</b> To note the decision made by the panel		
<b>Reasons:</b> Panel decisions provide useful guidance and points of learning		
Relevant scrutiny committee to be consulted    NA		
Cabinet Decision Required	NA	
Council Decision Required	NA	
CABINET MEMBER PORTFOLIO HOLDER:-    Cllr Emlyn Dole - Leader		
Directorate:  Name of Head of Service:  Linda Rees-Jones  Report Author: Robert Edgecombe	Designations:  Head of Administration and Law  Legal Services Manager	Tel:  Email addresses: <a href="mailto:rjedgeco@carmarthenshire.gov.uk">rjedgeco@carmarthenshire.gov.uk</a>  01267 224018

**EXECUTIVE SUMMARY  
STANDARDS COMMITTEE  
20/09/2021**

**ADJUDICATION PANEL FOR WALES – CLLR DAVID POOLE**

On the 28<sup>th</sup> June 2021 the Adjudication Panel (APW) considered the case of Councillor David Poole of Caerphilly County Borough Council.

The allegations were that Councillor Poole had breached Caerphilly County Borough Council's Code of Conduct in that he had;

- (i) Used his position to secure an advantage by deciding to buy shares in a company, IQE plc, on the basis of confidential information that he had received through his position as a Councillor at a meeting on 8 October 2018 (alleged breach of paragraph 7 (a) of the Code) and thereby brought the Authority and his office as a member into disrepute (alleged breach of paragraph 6 (1)(a) of the Code);
- (ii) Failed to disclose a personal interest and/or withdraw from a meeting on 18 February 2019 when a matter in which he had a prejudicial interest was being discussed, namely financial dealings with that same company (alleged breaches of paragraphs 11 (1) and 14 (1) of the Code)

At the time of the alleged breaches Councillor Poole was the leader of the Council. In that role he received confidential reports relating to and attended meetings of the Cardiff Capital Region City Deal Cabinet and the alleged breaches related to that aspect of his role.

Following the sale of the shares in IQE plc Councillor Poole resigned as leader of the Council and referred himself to the Ombudsman for investigation.

The APW decided that Councillor Poole should be suspended from acting as a member of the authority as follows;

- In respect of his breaches of paragraphs 6 and 7 of the Code, a period of five months;
- In respect of his breaches of paragraphs 11 and 14 of the code, a period of two months concurrently.

The APW also made a recommendation to the Monitoring Officer regarding the need for members to be reminded of the duty to register their interests when they arise and not just annually.

**DETAILED REPORT ATTACHED?**

**YES**

## IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**EXECUTIVE BOARD PORTFOLIO HOLDER(S) AWARE/CONSULTED**

NO

### Section 100D Local Government Act, 1972 – Access to Information

#### List of Background Papers used in the preparation of this report:

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-190	County Hall, Carmarthen

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**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/003/2020-021/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE  
CODE OF CONDUCT**

**RESPONDENT:** Councillor David Vincent Poole

**RELEVANT AUTHORITY:** Caerphilly County Borough Council

**1. INTRODUCTION**

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
- 1.2 The Case Tribunal determined its adjudication by way of written representations at a meeting on 28 June 2021 which was conducted by video. Its reasons for doing so were set out in the Listing Direction dated 29 April 2021 at paragraph 2.6 [A3].
- 1.3 References in square brackets within this Decision Report are to sections and pages within the bundle of Tribunal Case Papers unless otherwise stated.

**2. PRELIMINARY DOCUMENTS**

**2.1 Reference from the Public Services Ombudsman for Wales**

- 2.1.1 In a letter dated 23 February 2021, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against the Respondent [E367]. The allegations were that the Respondent had breached Caerphilly County Borough Council's Code of Conduct in that he;
  - (i) Used his position to secure an advantage by deciding to buy shares in a company, IQE plc, on the basis of confidential information that he had received through his position as a Councillor at a meeting on 8 October 2018 (alleged breach of paragraph 7 (a) of the Code) and thereby brought the Authority and his office as a member into disrepute (alleged breach of paragraph 6 (1)(a) of the Code);
  - (ii) Failed to disclose a personal interest and/or withdraw from a meeting on 18 February 2019 when a matter in which he had a

prejudicial interest was being discussed, namely financial dealings with that same company (alleged breaches of paragraphs 11 (1) and 14 (1) of the Code).

- 2.1.2 The circumstances leading to the alleged breaches were as set out above and, in more detail, in the factual findings which follow below.

## **2.2 The Councillor's Written Response to the Reference**

- 2.2.1 Although the Respondent was interviewed as part of the Ombudsman's initial investigation, he did not respond to the Adjudication Panel's subsequent communications. A copy of the Ombudsman's Report was forwarded to him by the Adjudication Panel on 24 February 2021 by email [E383-6]. He was directed to reply to the allegations in the Report in accordance with paragraph 3 (1) of the Schedule of the Adjudications by Case Tribunals and Interim Case Tribunal's (Wales) Regulations 2001 by 17 March 2021. He did not reply to that correspondence. By a letter dated 24 March 2021 [E430], which was sent to him both by email and post, the Adjudication Panel informed him that, as a result of his failure to respond by the deadline of 17 March 2021, the case papers were being forwarded to this Case Tribunal. Again, no response was received to that communication.
- 2.2.2 The Relevant Authority confirmed the accuracy and use of the Respondent's email addresses and the Listing Direction confirmed the Tribunal's approach in light of the Regulations (see paragraphs 2.4 and 2.5 [A4]).
- 2.2.3 On 4 May 2021, however, the Respondent did contact the Adjudication Panel, he apologised for his earlier failures to make contact and then set out his position in relation to the case against him [E452-3]. The extent to which the contents of the email advanced his case beyond the information already received is considered below.

## **2.3 The Ombudsman's Written Representations**

- 2.3.1 No further representations were made.

## **3. FINDINGS OF FACT**

- 3.1 The Case Tribunal found the following **undisputed** material facts:
- 3.1.1 The Respondent was, at all times relevant, the leader of Caerphilly County Borough Council. He had been Leader since May 2017, having become a Councillor in May 2004.
- 3.1.2 He received training on the Council's Code of Conduct in May 2017 and undertook to observe the Code whilst fulfilling the duties of his office [B49, 61 and 281].

- 3.1.3 In his role, he attended Cardiff Capital Region (CCR) City Deal Regional Cabinet Meetings, a joint working arrangement between 10 Councils of the Cardiff Capital Region. Amongst other things, the Cabinet decided to invest in the CSC Project, a scheme designed to breathe new economic life into south east Wales through the creation of a manufacturing hub for semi-conductors. A company, CSC Foundry Ltd ('CSC'), was incorporated as a special-purpose vehicle in July 2017 to enable the CCR to give effect to its plans for the region. All 10 interested Councils had representatives acting as directors of CSC [B201].
- 3.1.4 At a CCR City Deal Regional Cabinet Meeting on 8 October 2018, the Respondent was present when a report prepared by Monmouthshire County Council the lead authority to CSC, and marked '*Confidential Appendix 1*', was considered [B192-199]. The report contained a number of appendices [B200 and following].
- 3.1.5 The documentation contained details of the financial arrangements between CSC and IQE plc ('IQE'), a company which had been engaged to work with CSC, the Welsh Government and the CCR City Deal to transform a disused building in Newport into the hub for the manufacture of semi-conductors for which it received a £38m grant. CSC controlled and managed that grant to IQE.
- 3.1.6 Contained within the report and its appendices were information about the level of IQE's investment and factors which affected its profitability (tooling costs, capacity and productivity). The report considered that productivity was "*significantly exceeding plan*", with a likely resultant acceleration to the 'tipping point' at which IQE achieved profitability (paragraph 9 [B194]). Further, within the appendices, an independent opinion was expressed about the likely consequent trajectory of IQE's share price by a well known firm of investment consultants, GVA [B234-5];
- "Whilst IQE's share price has dipped in recent months, we have been provided with evidence from analysts and the company's chairman to suggest that the share price should increase strongly again."* [B235]
- 3.1.7 The Respondent bought shares in IQE to the value of £2,034.55 on 22 October 2018 [B345]. He subsequently informed the Ombudsman that he had made the purchase with a view to making a profit [B303]. As a result, he believed that he had personal and prejudicial interests in respect of IQE [B293].
- 3.1.8 In January 2019, the Respondent attempted to amend his Register of Interests to reflect his ownership of shares in IQE. Following advice from the Monitoring Officer, no amendment was made. He was advised that, because of the level of his shareholding and the fact that the business was based outside the Council's area, it was not necessary to make any amendment [B125, 272-4 and 288-9].

- 3.1.9 On 21 January 2019, the Respondent reinvested dividends from his IQE shares by buying a further interest to the value of £111.57 [B346]. A further reinvestment of £111.33 was made on 31 May 2019 [B347].
- 3.1.10 At a CCR City Deal Regional Cabinet Meeting which took place on 18 February 2019, the Respondent made no declaration of interest regarding IQE (paragraph 2 [B252-6]). Amongst the matters discussed at that meeting was the Welsh Audit Office Review of the Cabinet's investment decisions, such decisions having included the grant to IQE (paragraph 11 [B256]). The Respondent remained in the room throughout the meeting [B291-2].
- 3.1.11 At a CCR City Deal Regional Cabinet Meeting on 29 April 2019, the Respondent *did* declare an interest regarding IQE and left the room during discussions which concerned CSC and/or IQE ([B257-262] and [B293-4]). After the meeting, he did not contact the Monitoring Officer to inform him of any change in respect of his registered interests [B294].
- 3.1.12 On 3 June 2019, at the prompting of the Deputy Monitoring Officer, the Respondent amended his Register of Interests to include IQE ([B96-101] and [B296-7]).
- 3.1.13 At a further CCR Cabinet Meeting which took place on 10 June 2019, the Respondent followed the same course of conduct ([B263-270] and [B299]).
- 3.1.14 The Respondent's declared interest was then discussed between him, officers from the Welsh Audit Office and the Monitoring Officer on 29 August 2019.
- 3.1.15 The Respondent sold his shares in IQE on 9 September 2019 for £1,244 [B348] and amended his Register of Interests to delete IQE [B107].
- 3.1.16 On 16 September 2019, the Respondent then referred himself to the Ombudsman [B33-4]. Within the letter, he stated that he understood that, in accordance with paragraph 11 (4) of the Code, he should have notified the Monitoring Officer of his declared interest at the meeting on 29 April 2019. He also stated that;  
*"..with the benefit of hindsight, by purchasing shares in IQE, I was preventing myself becoming involved in any decisions of CCR around IQE and the hoped for wider compound semiconductor industry growth in the area."*
- 3.2 The Case Tribunal reached the following findings on the **disputed** material facts which were identified within the Annex to the Listing Direction on the balance of probabilities [A8]:

- 3.2.1 Whether the Respondent sought to benefit from information which he obtained as a result of his involvement in the meeting of 8 October 2018 by buying shares in IQE;
- 3.2.1.1 The Respondent had access to the confidential information referred to at the meeting of 8 October 2018. Although initially stating that he could not remember whether he had access, he accepted that he would have done when he was interviewed as part of the Ombudsman's investigation (see [B306] where he accepted that he would have had access it "*without a doubt*"). However, he denied that there had been anything within it which caused him to purchase the shares [B307];
- 3.2.1.2 The Respondent's motivation for purchasing the shares was stated to have been a demonstration of a 'vote of confidence' in the regeneration scheme and IQE's involvement in it. That was the reason given at interview [B303], albeit that he had also accepted that he had hoped to benefit financially. It was the reason repeated more recently in his email of 4 May 2021 [E452-3];
- 3.2.1.3 The Tribunal noted the Respondent's experience and was particularly struck by the proximity of the dates of the meeting and the share purchase, 8 and 22 October 2018 respectively. The simple message in the GVA letter was clear; that IQE's share price was likely to have seen an increase following an earlier than predicted achievement of profitability. The Respondent could have purchased shares at any point before 22 October to show a 'vote of confidence' in IQE, but only chose to do so once in receipt of that prediction;
- 3.2.1.4 The Tribunal considered that it was also noteworthy that, within his self-referral, the Respondent had appreciated that the purchase of the shares had been unwise, albeit because he considered that he was conflicted in future discussions regarding IQE, rather than because he ought not to have benefited from the contents of the confidential information that was seen.
- 3.2.1.5 Taking all of those matters into account, the Tribunal concluded that the Respondent had probably sought to benefit from the confidential information that he received in connection with the meeting of 8 October 2018 when he bought the shares.
- 3.2.2 Whether the information contained within '*Confidential Appendix 1*' was publicly available in any event and, if so, at what time;

- 3.2.2.1 There was some doubt as to what information had been made public in connection with the meeting of 8 October 2018.
- 3.2.2.2 Paragraph 1 of the minutes of the meeting suggested that there had been some technical difficulties associated with the dissemination of paperwork before the meeting [B190], but the Ombudsman's letter of 21 May 2021 made it clear that the Agenda and the report itself *had "been available for public inspection"* [E461]. The minutes made it clear, however, that certain appendices to the report were *not* published, which appeared to include the GVA report [B191]. That made sense to us given the price sensitive nature of the predictions within it.
- 3.2.2.3 The Respondent alleged that he had no advantage over anybody else when he had decided to buy the shares [B310]. He relied upon the fact that the *"information was in the public domain"* [B308] since there *"was in a press release anyway"* [B309]. In his more recent email of 4 May 2021, he stated that *"the decision to grant a loan to IQE was fully reported in the local media in 2017 and in the financial press"* and that he made the purchase a year later when his *"knowledge of the Company was out of date"* [E452]. The press report from 14 July 2017 undoubtedly covered IQE's initial involvement as the Respondent had claimed on 4 May 2021, but what it did *not* cover and/or make public was the change in the productivity projections, anticipated profitability and the likely effect on IQE's share price in 2018 [B341-3]. The Respondent pointed to no other source of such information which *he* had had been aware of before the shares were purchased.
- 3.2.2.4 Having considered all of that evidence, the Tribunal concluded that, although some information about productivity and potential profitability was made publicly available within the report to the meeting of 8 October 2018 (e.g. [B194]), the opinion in respect of its share price was *not* part of that information [B325] (see paragraph 3.1.6 above). Further, the Claimant's suggestion that that information had been made available in a press report in 2017 was not correct. The report contained considerably greater up-to-date detail and, in the case of the confidential appendices, information which was potentially price sensitive and valuable to an investor.
- 3.2.3 Whether the Respondent sought to influence any decision in which he had a prejudicial interest;
- 3.2.3.1 The Respondent was only present at one meeting between the date of his purchase of the shares and subsequent

meetings when he declared an interest, the meeting of 18 February 2019;

3.2.3.2 The subject for discussion on 18 February was not IQE itself and/or factors which may have affected its profitability or share price, but the Welsh Audit Office report into the arrangements for the CCR City Deal [B256]. There was nothing within the minutes or other evidence which suggested that the Respondent had sought to influence any decision in which he had a prejudicial interest. The meeting simply noted the contents of the report and the 'lessons' which were to have been learnt from it. Although the Tribunal did not have a copy of the Welsh Audit Office report, there was nothing to suggest that the findings may have either undermined or improved IQE's position.

#### **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

##### **4.1 The Code of Conduct**

4.1.1 The relevant parts of the Code of Conduct were as follows;

Paragraph 6 (1)(a);

*"You must-*

*(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;"*

Paragraph 7 (a);

*"You must not-*

*(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on all secure for yourself.. an advantage..."*

Paragraph 11 (1);

*"Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest is apparent."*

Paragraph 14 (1)(a);

*"Subject to subparagraphs (2), (2A), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee-*

*(a) withdraw from the room, chamber or place where a meeting considering business is being held..."*

##### **4.2 The Respondent's Submissions**

- 4.2.1 The Respondent's position in respect of the breaches alleged under the Code was as follows;
- 4.2.1.1 Paragraph 6 (1)(a);  
When interviewed, the Respondent stated that he considered that he had "*fully complied*" with that paragraph of the Code [B311].
- 4.2.1.2 Paragraph 7 (a);  
In the Respondent's letter of self-referral, he went some way to admitting a breach of paragraph 7 (a). He stated that, "*with the benefit of hindsight*", he saw that the purchase of the shares prevented him from becoming involved in any future CCR decisions involving IQE [B34]. When subsequently interviewed, however, he stated that did not think that a lay person would have regarded his actions as having been in breach of that paragraph [B310].
- 4.2.1.3 Paragraph 11 (1);  
In his letter of self-referral, the Respondent fully accepted that he "*should have notified the council's Monitoring Officer of the disclosure of the IQE interest at the meeting of CCR in April 2019*" [B34], but that was in relation to a potential breach of paragraph 11 (4). He did not address a potential breach of paragraph 11 (1).
- 4.2.1.4 Paragraph 14 (1)(a);  
When interviewed, he '*did not think*' that he had breached that paragraph, albeit that he accepted that he held a prejudicial interest as stated above [B301].

### **4.3 The Ombudsman's Report**

- 4.3.1 It was contended that;
- 4.3.1.1 Paragraphs 6 (1)(a) and 7 (a);  
The Ombudsman considered that the facts were '*suggestive*' of breaches of both paragraphs of the Code. The Ombudsman believed that the nature of the confidential information which he had access to had led him to buy the shares in IQE. That information contained indications as to the likely value of the shares and he considered that the decision to purchase after sight of the commercially sensitive information demonstrated "*extremely poor judgment on his behalf*" [B26-7].
- 4.3.1.2 Paragraph 11 (1);



The Ombudsman appeared to consider that the Respondent had a personal interest as a result of the application of the wording of paragraph 10 (2)(a)(viii) of the Code; “*any body to which you have been elected, appointed or nominated by your authority*” [B13]. It was the Ombudsman’s case that the Respondent failed to declare that interest at the meeting of 29 April 2018.

- 4.3.1.3 Paragraph 14 (1)(a);  
The Ombudsman’s view was that the Respondent had a prejudicial interest which ought to have led him to withdraw from the meeting on 18 February 2019 (paragraph 50 [B28]), a view shared by the Monitoring Officer ([B114] and paragraph 7 [B273]).

#### **4.4 Case Tribunal’s Decision**

- 4.4.1 On the basis of the findings of fact, the Case Tribunal unanimously found that there were failures to comply with the Code as follows:

- 4.4.1.1 Paragraph 6 (1)(a);  
The Ombudsman’s Guidance in relation to this paragraph of the Code reminded members that their actions were subject to greater scrutiny than those of ordinary members of the public [B324].

The Tribunal considered that the Respondent’s breach of paragraph 7 of the Code (below) was conduct which brought his Authority into disrepute and, in particular, his office as leader.

- 4.4.1.2 Paragraph 7 (a);  
The Ombudsman’s Guidance referred to the need for members to be mindful of the fact that the paragraph within the Code applied at all times, not just when carrying out duties as a member [B326].

Having concluded that the Respondent had used his capacity to attempt to secure a pecuniary advantage for himself when he bought the shares in IQE relying on the confidential information referred to within paragraph 3.2.2, the Tribunal concluded that he had committed a breach of paragraph 7 (a).

- 4.4.1.3 Paragraph 11 (1);  
The Tribunal had some difficulty with this allegation because of the wording of paragraph 10 of the Code.

Paragraph 10 (2)(iv) defined a personal interest to include an interest which related to a corporate body which had a

place of business or land in the authority's area *and* in which the interest exceeded the value of £25,000. The Respondent did not meet each of those conjunctive tests in relation to his shareholding in IQE. Paragraph 10 (2)(a)(ix)(bb) related to companies, societies or other bodies "*directed to charitable purposes.*" We could not see that either of those sub-paragraphs or any other within paragraph 10 (2)(a) of the Code clearly defined the Respondent's shareholding as a personal interest.

Paragraph 10 (2)(c) was more generic but it extended the definition of personal interests to include something upon which an authority's decision might have affected a member's financial position (sub-paragraph (i)). The Tribunal considered the Respondent's share interest was likely to have been covered by paragraph 10 (2)(c)(i) because any decision in relation to IQE could have affected his financial position as a shareholder.

The Tribunal did not see the relevance of paragraph 10 (2)(a)(viii) which had been raised by the Ombudsman [B13].

The next question to address was whether the Respondent had attended a meeting at which "*that business [was] considered*".

The Respondent considered that it was not; it was only the 'process' or due diligence 'system' by which the investment had been made which was considered on 18 February 2019 (see the interview [B291] and his recent email of 4 May 2021 [E453]). The Tribunal concluded, however, that the Welsh Audit Office's review of CCR's investments clearly would have encompassed an examination of the £38m grant to IQE. In its broadest sense, IQE was either directly or indirectly 'considered' at the meeting.

- 4.4.1.4 Paragraph 14 (1)(a);  
The Tribunal considered that the Respondent held a prejudicial interest paragraph 12 (1) of the Code. He accepted that that was the case, as did the Monitoring Officer. He did not withdraw from the room on 18 February 2019 when item 11 was discussed and was in breach of paragraph 14 (1) of the Code as a result.

## **5. SUBMISSIONS ON ACTION TO BE TAKEN**

### **5.1 The Respondent's Submissions**

- 5.1.1 The Respondent had made no submissions which were directly related to mitigation, although comments within his interview and his email of 4 May 2021 contained some relevant points which we considered [E452-3].

## **5.2 The Ombudsman's submissions**

- 5.2.1 The Ombudsman made submissions by a letter dated 21 May 2021 [E460-2].

## **5.3 Case Tribunal's Decision**

- 5.2.1 The Tribunal considered all of the facts of the case, the Presidential Sanctions Guidance and the parties' submissions. It considered the following points to have been of particular relevance in mitigation;

- 5.2.1.1 The fact that there was no record of the Respondent having committed any previous breach of the Code of Conduct;
- 5.2.1.2 The fact that he did seek to register an interest in January 2019, but failed to do so as a result of the Monitoring Officer's advice;
- 5.2.1.3 His acceptance that his purchase of IQE shares led him to hold personal and prejudicial interests;
- 5.2.1.4 He did not seek to influence any decision concerning IQE that was taken at the meeting on 18 February 2019;
- 5.2.1.5 He then left the meetings on 29 April and 10 June 2019;
- 5.2.1.6 He then also resigned as leader, referred himself to the Ombudsman and accepted further training.

- 5.2.2 The following aggravating features were relevant;

- 5.2.2.1 The Respondent was an experienced council member and, as leader, had an influential position and was expected to have set the standards of conduct for the Council;
- 5.2.2.2 He had used confidential, price sensitive information to attempt to secure a personal advantage on the purchase of the IQE shares;
- 5.2.2.3 There was a significant gap between his declaration of interest at the meeting on 29 April and the amendment of his register of interests on 3 June 2019, the latter having been prompted by the Deputy Monitoring Officer, a further potential breach of paragraph 11 (4) of the Code;
- 5.2.2.4 Through the interview process, he had shown no real insight into his wrongdoing and/or acceptance of guilt;
- 5.2.2.5 In the latter stages of the process leading to this decision, he had failed to engage with the Adjudication Panel.

5.2.3 The Case Tribunal unanimously concluded decision that the Respondent ought to have been suspended from acting as a member of the authority as follows;

5.2.3.1 In respect of his breaches of paragraphs 6 and 7 of the Code, a period of **five months**;

5.2.3.2 In respect of his breaches of paragraphs 11 and 14 of the code, a period of **two months concurrently**.

The Tribunal considered that the breach of paragraph 7 was the more serious matter, particularly since it gave rise to a breach of paragraph 6. The suspension was concurrent because the Tribunal considered that the breaches of paragraphs 11 and 14 effectively arose from the same facts.

5.2.4 The Authority and its Standards Committee are notified accordingly.

5.2.5 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

## 6. CASE TRIBUNAL RECOMMENDATIONS

6.1 The Case Tribunal makes the following recommendation to the Authority and its standards committee;

6.1.1 That the Monitoring Officer re-emphasises the requirement for members to register interests as/when they arise and that the duty does not arise annually.



Signed.....  
John Livesey  
Chairperson of the Case Tribunal

Date...30 June 2021...

Dr G Jones  
Panel Member

Mrs S McRobie  
Panel Member

## STANDARDS COMMITTEE 20/09/2021

REVIEW OF WHISTLEBLOWING POLICY		
<b>Recommendations / key decisions required:</b> To note and approve the proposals made by officers		
<b>Reasons:</b> As requested by the Committee officers have reviewed the position regarding the inclusion of the Chair of Standards Committee in the policy.		
Relevant scrutiny committee to be consulted NA		
Cabinet Decision Required NA Council Decision Required NA		
CABINET MEMBER PORTFOLIO HOLDER:- Cllr Emlyn Dole - Leader		
Directorate:  Name of Head of Service:  Linda Rees-Jones  Report Author: Robert Edgecombe	Designations:  Head of Administration and Law   Legal Services Manager	Tel:  Email addresses: <a href="mailto:rledgeco@carmarthenshire.gov.uk">rledgeco@carmarthenshire.gov.uk</a>  01267 224018

# EXECUTIVE SUMMARY STANDARDS COMMITTEE 20/09/2021

## REVIEW OF WHISTLEBLOWING POLICY

At the meeting of the Committee on the 14<sup>th</sup> June, a revised whistleblowing policy was approved but committee members expressed concern that the Chair of the Committee was named in the Policy as a possible contact for whistleblowers and his personal contact details given.

Whilst this has been the position for at least 10 years officers agreed to review this practice and research what approach is taken by other authorities.

A study of the whistleblowing policies of neighbouring authorities shown that none of them includes the Chair of Standards Committee as a possible contact for whistleblowers. However it is felt that given the role that the Committee has in exercising oversight of the policy, it is important that the Chair of the committee is not removed completely.

Officers therefore suggest the Policy is amended in accordance with the attached draft, which seeks to make it clearer that the Chair of Standards would not act as a contact officer if approached by a whistleblower.

**DETAILED REPORT ATTACHED?**

**NO**

## IMPLICATIONS

**I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:**

**Signed:** *LRJones*

**Administration and Law**

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>	<b>NONE</b>

## CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below Signed: <i>LRJones</i> <span style="float: right;">Head of Administration and Law</span>	
1. <b>Scrutiny Committee</b> – not applicable 2. <b>Local Member(s)</b> - not applicable 3. <b>Community / Town Council</b> - it is suggested that such consultation take place 4. <b>Relevant Partners</b> - not applicable 5. <b>Staff Side Representatives and other Organisations</b> - not applicable	
<b>EXECUTIVE BOARD PORTFOLIO HOLDER(S) AWARE/CONSULTED</b>	NO

<b>Section 100D Local Government Act, 1972 – Access to Information</b> <b>List of Background Papers used in the preparation of this report:</b>		
Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-190	County Hall, Carmarthen

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## WHISTLEBLOWING POLICY



### Legal Protection for Workers with Concerns at Work:

Employee; Casual Worker; Volunteer; Contractor;  
Agency Worker: Consultant.

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### What is this about?

1. We (the 'Council') want to ensure a working environment where you (the 'worker') feel confident to raise any concerns about malpractice within the Council. However, some people are reluctant to voice their concerns because of fears about possible repercussions, or a feeling of disloyalty to colleagues. Some might consider it easier to ignore the concern rather than report what may just be a suspicion of malpractice.
2. Malpractice can include fraud, corruption, bribery, dishonesty, financial irregularities, serious maladministration because of deliberate and improper conduct, unethical activities (which may be of a criminal nature) and dangerous acts or omissions which create a risk to health, safety or the environment, criminal offences, or failure to comply with a legal or regulatory obligation.
3. Whistleblowing does not include mismanagement as this may arise from weak management, for example, rather than malpractice. Mismanagement may be dealt with under the Council's Capability Policy or Disciplinary Procedure, as appropriate.
4. This policy is intended to encourage and support you to raise serious concerns **within** the Council safely and with confidence and view this as a **duty**, rather than overlooking the problem. 'Whistle-blowing' refers to the disclosure, by workers, of malpractice as well as illegal acts or omissions at work.
5. This policy will be applied consistently to everyone irrespective of race, colour, nationality, ethnic or national origins, language, disability, religion, belief or non belief, age, sex, gender reassignment, sexual orientation, parental, marital or civil partnership status.
6. If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly

### What legal protection do I have?

7. The Public Interest Disclosure Act (PIDA) 1998 gives you legal protection against dismissal and other detriments where you disclose certain types of information in the public interest, to the Council, either as your employer or (in the case of a contractor disclosing information) to the organisation that has legal responsibility for that matter.

### Will I be protected if I make a public disclosure?

8. You are encouraged to raise your concerns via your line manager (para.33), the Council's dedicated Whistleblowing Officers (para.33); a confidential mailbox (para.34), Senior Officers (para.35) or a recognised Trade Union Representative (para.36). You can also seek advice from prescribed organisations independent of

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the Council regarding your concerns (para.50). If you raise concerns to someone else other than those detailed within this procedure, e.g. to the local paper, depending on your disclosure and to whom it is made, you may not receive the legal protection as a 'whistleblower'. You are therefore strongly advised to seek advice before taking this action.

9. If you do take the matter outside the Council you should ensure that you do not disclose any confidential information, e.g. client case notes, given to you in confidence, unless you have consent in writing from the person to whom the information relates.

#### What support can I expect?

10. At all times, when raising and investigating your concerns:

- Directors and Heads of Service, will support the investigation process
- your concerns will be taken seriously
- the Council will do all it can to support you throughout the investigation, e.g. provide advocacy services, interpreters, counselling etc.

If appropriate, and after full consultation the Council may consider temporarily re-deploying you or others for the period of the investigation.

#### What is the Council's attitude to malpractice in the workplace?

11. We take any malpractice within the Council very seriously, as we are committed to maintaining the highest standards of openness, probity and accountability. If you have serious concerns about any aspect of the Council's work then you are encouraged and expected to come forward and voice those concerns.
12. We understand that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. However, if you raise your concerns you will have nothing to fear as you will be doing your duty to your employer, your colleagues and those to whom you provide a service.
13. Harassment or victimisation of individuals, who have raised concerns, including informal pressures, will not be tolerated and will be treated as a serious disciplinary offence which will be dealt with under the disciplinary procedure.
14. We will not tolerate any attempt on the part of any worker, councillor, council contractor or supplier to apply any sanction or detriment to anybody who has reported to the Council any serious and genuine concern that they may have about apparent wrongdoing.

15. We will treat such conduct by an employee of the Council as a serious disciplinary matter, and any such conduct by a Councillor is liable to be reported as a breach of the Members Code of Conduct.
16. Where any such conduct is undertaken by any contractor or supplier of the Council we will regard that as a serious breach of contract.
17. Any such behaviour by any recipient of a Council service will be regarded as a breach of the condition under which that service is provided.

#### **Who can blow the whistle?**

18. This policy applies to:
  - Workers for Carmarthenshire County Council including all employees, centrally employed teachers and casual workers
  - Employees of contractors working for the Council on Council premises, for example, agency staff, builders, drivers
  - Those providing services under a contract or other agreement with the Council in their own premises, for example care homes
  - Voluntary workers working with the Council
  - Consultants engaged by the Council
19. However, this policy does not cover staff on the complement of locally managed schools for which local arrangements exist. In the absence of local arrangements school governing bodies are recommended to adopt the principles contained within Welsh Government's 'Procedures for Whistleblowing in Schools and Model Policy'.
20. [Employees and workers of the Council's Local Authority Trading Companies \(LATC\) should normally raise any concerns through the LATC's own whistleblowing procedures. Where the specific concern relates to the governance arrangement, business contract or legal agreement between the LATC and the Authority or vice versa the individual may opt to raise the matter directly with the Authority using the process described in this policy.](#)

#### **What can I blow the whistle about?**

20. You are encouraged to 'blow the whistle' where you reasonably believe malpractice has taken place or is likely to take place, in one or more of the following six areas:
  - Criminal offences
  - Breach of legal obligation
  - Miscarriages of justice
  - Danger to the health and safety of an individual
  - Damage to the environment

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- The deliberate concealing of information about any of the above

21. You can raise serious concerns about any aspect of service provision or conduct of officers or Members of the Council or others acting on behalf of the Council. The event may already have occurred or it may be likely to be committed in the future. For example, your concerns might fall into one or more of the six areas of malpractice describe above that:

- is potentially unlawful, fraudulent or corrupt
- might contravene our Standing Orders, our Financial Procedure Rules, our policies, codes of conduct or other legal obligations
- could amount to improper conduct by an officer or a member
- might fall below established standards of practice
- constitutes sexual, physical or emotional abuse
- potentially endangers the health and safety of an individual
- is causing, or is likely to cause, damage to the environment
- might involve a miscarriage of justice
- is an attempt to cover up any of the above examples

22. In addition, the Council has signed up to Welsh Government's Code of Practice on Ethical Employment in Supply Chains. The Code covers:

- Modern Slavery;
- Blacklisting;
- False self-employment;
- Unfair use of umbrella schemes and zero hours contracts;
- Paying the national living wage.

You are also encouraged to 'blow the whistle' where you reasonably believe malpractice has taken place or is likely to take place and is related to the direct activities or the supply chains of the Council, and this malpractice falls within one or more of the six areas described in Para. 20 above. Further information can be found in the Council's Ethical Employment & Supply Chains Policy.

23. If your concerns fall outside the six areas illustrated above you will be advised of the correct procedure to follow as described below.

#### How does the policy fit in with other Council policies?

24. The Whistle-blowing Policy is intended to cover major concerns that **fall outside** the scope of other procedures **and are in the public interest**, i.e. any **serious concerns** that you have about any aspect of service provision or the conduct of officers or Members of the Council or others acting on behalf of the Council can be reported under this policy.

25. Concerns you may have about your own employment with the authority, such as, terms and conditions of employment, health & safety, work relations, new working

practices, working environment or organisational change should be raised through the Grievance procedure.

26. Concerns you may have about allegations of bullying, harassment, victimisation or discrimination in work should be raised in line with the Council's Behavioural Standards guidance.
27. A whistle blowing issue could be entangled within a grievance or concerns about standards of behaviour, in which case the Council will need to consider the facts, assess the risks and decide how to best deal with the issue (See Appendix A Whistleblowing Flowchart).
28. This policy should be read in conjunction with the Council's Officer Code of Conduct and any corporate and/or departmental procedures for investigating concerns which may be developed from time to time and which will be drawn to the notice of employees and others to whom this policy applies.

#### **What if I am already involved in another HR procedure?**

29. Any investigation into allegations of malpractice will not influence or be influenced by any disciplinary, grievance, sickness, capability, redundancy or any other procedures that already affect you or may affect you in the future. On the other hand, any disciplinary grievance, sickness, capability, redundancy or any other procedures to which you are already subject will not be halted as a result of raising concerns.

#### **How does this policy fit with the Members' Code of Conduct?**

30. The Council has no power to deal with Code of Conduct complaints against an elected member. If you raise concerns about an elected member under this policy you will be given the appropriate legal protection against any acts of detriment and advised to make your concerns to the Public Services Ombudsman for Wales. Alternatively, the Monitoring Officer may decide to refer the matter to the Ombudsman if it is considered appropriate to do so. Details of the Ombudsman's complaints process can be found at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

### What if I want to make anonymous allegations?

31. You can raise concerns anonymously, but they are much less powerful and will be considered under this policy at the discretion of the Monitoring Officer. Remember, the purpose of this policy is to protect and support you and ensure that you can raise your concerns with confidence. If you do not tell us who you are, it will be much more difficult for us to look into the matter, to support and protect you, or to give you feedback.

### Is my identity kept confidential?

32. All disclosures will be treated in confidence and every effort will be made not to reveal your identity if you so wish. It must be appreciated however that the investigation process may reveal the source of the information and a formal statement may be required from you as part of the evidence. If you are required to give evidence in criminal or disciplinary proceedings, we will arrange for you to receive advice about the procedure. If disclosure of your identity becomes unavoidable then the Council will support you through the process.

### How do I raise a concern?

33. You should not approach or accuse individuals directly or attempt to investigate the matter yourself. Instead can raise your concerns with your line manager or if you

#### Members

##### Am I covered by the PIDA?

No, this legislation provides protection to 'workers' and this does not extend to Members who hold positions of public office.

##### What is my role as a Member in the Whistleblowing Process?

You may witness or be approached by a 'worker' about a potential whistleblowing concern. In this situation it is not appropriate for you to seek further information or make your own enquiries and are therefore advised to speak directly to the Monitoring Officer, Deputy Monitoring Officer or Chair of Standards Committee.

prefer, one of the Council's dedicated Whistleblowing Officers, as shown below:

Whistleblowing Officer	Job Title/e-mail address	Phone number
Noelwyn Daniel	Head of ICT Service	01267 246270


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	<a href="mailto:NDaniel@carmarthenshire.gov.uk">NDaniel@carmarthenshire.gov.uk</a>	(extension 6270)
Nigel J Evans	Practice Support Manager <a href="mailto:nevans@carmarthenshire.gov.uk">nevans@carmarthenshire.gov.uk</a>	01267 224694 (extension 4694)
Tracey Thomas	Principal Development Officer <a href="mailto:TrThomas@carmarthenshire.gov.uk">TrThomas@carmarthenshire.gov.uk</a>	01267 246202 (extension 6202)
Stefan Smith	Head of Children's Services <a href="mailto:SJSmith@carmarthenshire.gov.uk">SJSmith@carmarthenshire.gov.uk</a>	01267 246530 (extension 6530)
Nicola J Evans	Business Support Manager <a href="mailto:NJEvans@carmarthenshire.gov.uk">NJEvans@carmarthenshire.gov.uk</a>	01267 224124 (extension 4124)
Alan Howells	Business and Development Manager <a href="mailto:AEHowells@carmarthenshire.gov.uk">AEHowells@carmarthenshire.gov.uk</a>	01267 228140 (extension 5140)
Cathy Richards	Senior Safeguarding Manager <a href="mailto:CRichards@carmarthenshire.gov.uk">CRichards@carmarthenshire.gov.uk</a>	01267 228995 (extension 2995)

 You are welcome to contact me in Welsh or English

The person you speak to and raise your concerns will offer you some initial advice and guidance and will normally become your "Contact Officer". This will depend on the nature of your concerns and could be someone else with your agreement.

**Commented [RE1]:** This is part of the former paragraph 38 which I suggest we move here to make it clearer that it does not apply to the people named in the tables below

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1. If you do not wish to raise your concerns with your line manager or one of the Council's dedicated Whistleblowing Officers you can raise your concerns through the Council's confidential Whistleblowing mailbox by emailing [CEWhistleBlowing@carmarthenshire.gov.uk](mailto:CEWhistleBlowing@carmarthenshire.gov.uk). This mailbox is only viewed by the Monitoring Officer and Deputy Monitoring Officer in the Legal Department.

2. Alternatively, you could contact one of the people listed below:

**Commented [RE2]:** Do we need to insert something here to make it clearer what the people in this table would do if contacted?


Name	Job Title/e-mail address	Phone number
Wendy Walters	Chief Executive <a href="mailto:WSWalters@carmarthenshire.gov.uk">WSWalters@carmarthenshire.gov.uk</a>	01267 224112
Linda Rees-Jones	Head of Administration and Law/Monitoring Officer <a href="mailto:Lrjones@carmarthenshire.gov.uk">Lrjones@carmarthenshire.gov.uk</a>	01267 224010
Robert Edgecombe	Legal Services Manager/Deputy Monitoring Officer <a href="mailto:rjedgeco@carmarthenshire.gov.uk">rjedgeco@carmarthenshire.gov.uk</a>	01267 224018
Chris Moore	Director of Corporate Services (including responsibility for proper administration of financial affairs) <a href="mailto:cmoore@carmarthenshire.gov.uk">cmoore@carmarthenshire.gov.uk</a>	01267 224120
Paul Thomas	Assistant Chief Executive (People Management) <a href="mailto:prthomas@carmarthenshire.gov.uk">prthomas@carmarthenshire.gov.uk</a>	01267 226123

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Andre Morgan	Chair of Standards Committee <a href="mailto:Andre.morgan@btinternet.com">Andre.morgan@btinternet.com</a>	01974 202564
Helen Pugh	Head of Revenues and Financial Compliance <a href="mailto:HLPugh@carmarthenshire.gov.uk">HLPugh@carmarthenshire.gov.uk</a>	01267 246223

 You are welcome to contact me in Welsh or English

36. You may seek the support of a companion, i.e. a recognised trade union official or representative or a work colleague, to assist you in raising your concerns and accompany you at any meeting through this procedure.

Contact names	Trades Union	E-mail address	Phone number
Mark Evans	UNISON	<a href="mailto:unisoncarms1@btconnect.com">unisoncarms1@btconnect.com</a>	01267 224942
Mark Preece	Unite	<a href="mailto:MAPreece@carmarthenshire.gov.uk">MAPreece@carmarthenshire.gov.uk</a>	07718925787
Allan Card		<a href="mailto:Allan.Card@unitetheunion.org">Allan.Card@unitetheunion.org</a>	01646 690618
Peter Hill	GMB	<a href="mailto:Peter.Hill@gmb.org.uk">Peter.Hill@gmb.org.uk</a>	01792 467803

37. If you would prefer to contact an outside organisation instead then a list of useful contacts is given at paragraph 49 below. It is better to contact one of the external organisations listed than to overlook your concerns.

#### What happens after I have raised my concerns?

38. The person you speak to and raise your concerns will offer you some initial advice and guidance and will normally become your "Contact Officer". This will depend on the nature of your concerns and could be someone else with your agreement. Your Contact Officer will be the person with whom you will have all future contact in respect of your concern, and if an investigation takes place (see below) s/he will be your primary contact for feedback.

39. We will need to get the details set out in writing as soon as possible. If you do not want to put your concerns in writing, then that's alright, your Contact Officer can do this for you instead and support you in expressing the background and history of your concern, giving names, dates and places where possible and the reason why you are particularly concerned about the situation. The earlier your concerns are expressed the easier it is to take action.

40. Although you are not expected to prove the truth of an allegation, you will need to demonstrate to your Contact Officer that there are reasonable and sufficient grounds for your concern.

#### How will we deal with your concerns?

41. Action taken by the Council will depend on the nature of the concern. The matters raised may be:

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Adopted: March 2004  
Revised: 14<sup>th</sup> June 2019 at Standards Committee.



People Management

**Commented [RE3]:** I suggest that if we are to keep the Chair in this section we remove the telephone number and insert the Chair's council email address

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- investigated internally by an appropriate person in line with the Council's Investigation Policy
  - referred to the Police
  - referred to the Wales Audit Office
  - the subject of an independent inquiry.
42. In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of specific procedures (for example, child protection) will normally be referred for consideration under those procedures. Some concerns may be resolved by agreed action without the need for investigation.
43. The Contact Officer will acknowledge your concern as soon as possible and contact you within 14 calendar days of you raising your concern to:
- indicate how it is proposed to deal with the matter
  - give you an estimate of how long it may take to provide a final response
  - tell you whether any initial enquiries have been made; and
  - inform you whether a full investigation will take place, and if not, why not.
44. The Contact Officer will give you as much feedback as possible, but sometimes precise action will not be set out where this would infringe upon a duty of confidence owed to the Council by someone else. Time estimates and limits may be amended by agreement between you and the Contact Officer.
45. The frequency of contact between you and the Contact Officer will depend upon the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Contact Officer or the officer investigating the matter will seek further information from you.
46. When any meeting is arranged between you and the Contact Officer, you have the right, if you so wish, to be accompanied by a companion (who may be a recognised trade union representative or a work colleague who is not involved in the area of work to which the concern relates). Steps will be taken to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, we will arrange for you to receive advice about the procedure.
47. We understand that you will need to be assured that the matter has been dealt with properly and therefore, subject to legal constraints, your Contact Officer will inform you of the outcome and confirm in writing within 14 calendar days of the conclusion of the matter, i.e. whether your concerns have been upheld, what actions the Council proposes to take (subject to confidentiality constraints) and timescales for implementing. At that point you will be asked to complete a short questionnaire about your experience of the whistle blowing procedure (See Appendix B). Your feedback is important to us, as it will help us to monitor the effectiveness of this policy.

### What happens if my concerns are not confirmed after an investigation?

48. If, you raise a concern using this policy but it is not confirmed by the investigation, no action will be taken against you. If, however, an allegation is made frivolously, maliciously or for personal gain, disciplinary action may be taken against you in accordance with the Council's Disciplinary Procedure.
49. Remember, if you want to take independent advice at any stage, you may contact the independent charity Public Concern at Work (see paragraph 49 for details). Their lawyers can give you free confidential advice at any stage about how to raise concerns about serious malpractice at work.

### What happens if I am not happy with the Council's response?

50. This policy is intended to provide you with a way to raise your concerns **within** the Council and we hope that you will be satisfied with the way that we deal with the matter. However, in the event that the issue is not resolved to your satisfaction then you are welcome to contact (assuming that they have not previously been involved in your case) the Council's Chief Executive or the independent chair of our Standards Committee. Their contact details are given at paragraph 34. As an alternative, we suggest the following possible contact points:

- The charitable organisation Public Concern at Work (See Appendix C). Telephone 020 7404 6609 or e-mail [info@pcaw.co.uk](mailto:info@pcaw.co.uk) or [whistle@pcaw.co.uk](mailto:whistle@pcaw.co.uk)
- The Auditor General for Wales, Public Interest Disclosure Helpline 01244 525980 or e-mail [whistleblowing@wao.gov.uk](mailto:whistleblowing@wao.gov.uk) or web [www.wao.gov.uk/whistleblowers-hotline](http://www.wao.gov.uk/whistleblowers-hotline)
- The Public Services Ombudsman for Wales. Telephone 0300 790 0203 or e-mail [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk) or web [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)
- Health and Safety Executive. Telephone 0300 003 1647 or Online form: <http://www.hse.gov.uk/contact/raising-your-concern.htm> or web [www.hse.gov.uk](http://www.hse.gov.uk)
- Care and Social Services Inspectorate for Wales. Telephone 0300 790 0126 or e-mail [cssiw.@wales.gsi.gov.uk](mailto:cssiw.@wales.gsi.gov.uk) or web [www.cssiw.org.uk](http://www.cssiw.org.uk)
- Care Council for Wales Tel: 0300 303 3444 [ftp@ccwales.org.uk](mailto:ftp@ccwales.org.uk)
- Children's Commissioner for Wales Tel: 01792 765600 or e-mail: [post@childcomwales.org.uk](mailto:post@childcomwales.org.uk) or web [www.childcomwales.org.uk](http://www.childcomwales.org.uk)
- Natural Resource Wales Tel: 0300 065 3000 Email: [enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)
- The Information Commissioner's Office Tel: 0303 123 1113 or e-mail [casework@ico.org.uk](mailto:casework@ico.org.uk) or web [www.ico.org.uk](http://www.ico.org.uk)
- Older People's Commissioner Tel: 02920 445 030 or e-mail [ask@olderpeoplewales.com](mailto:ask@olderpeoplewales.com) or web [www.olderpeoplewales.com](http://www.olderpeoplewales.com)

A full list of prescribed persons can be found at:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

Policies: Whistleblowing Policy  
Adopted: March 2004  
Revised: 14<sup>th</sup> June 2019 at Standards Committee.



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### **Who is responsible for this policy?**

51. Linda Rees-Jones, the Council's Monitoring Officer and Paul Thomas, Assistant Chief Executive share overall responsibility for the maintenance and operation of this policy. Linda Rees-Jones will keep a record of concerns raised and the outcomes (in a format that does not endanger confidentiality) and will report to the Standards Committee annually.
52. This edition of the policy was agreed by the Council's Standards Committee on 15<sup>th</sup> June. The policy is reviewed annually.

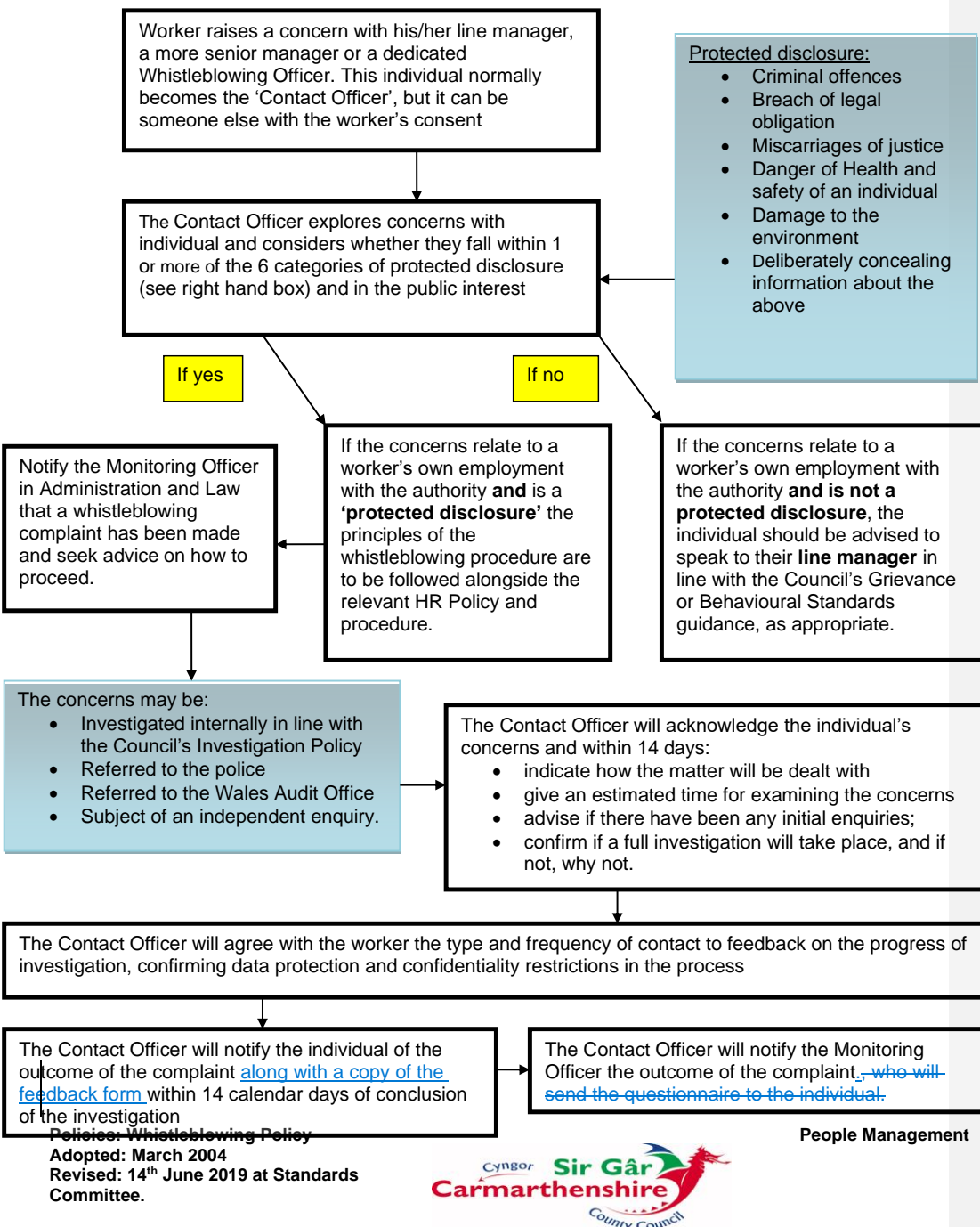
### **What happens to your 'information' and 'personal data'?**

53. The proper handling of personal information by Carmarthenshire County Council is very important to the delivery of our services, undertaking our legal obligations as an employer and maintaining public confidence. Personal data is any information that relates to a person who can be directly or indirectly identified from the information. The terms 'information' and 'personal data' are used and have the same meaning. To ensure that the Council treats your information correctly, we seek to adhere in full to the requirements of Data Protection legislation. The Human Resources – People Management and Legal Services privacy notices have therefore been produced to explain as clearly as possible what we do with your personal data and are available to view on the Council's website.

**If you require this publication in an alternative format, such as large print, Braille or on audiotape please telephone 01267 224651.**

## Appendix A

## WHISTLEBLOWING FLOWCHART



## Appendix B

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**CONFIDENTIAL -**  
**WHISTLEBLOWING PROCEDURE FEEDBACK FORM**

We have recently concluded an investigation into your concerns raised under the Council's Whistleblowing Policy. We would welcome your feedback in relation to how the matter was handled as this will assist us when dealing with future cases and when reviewing the policy. Your reply will be treated as confidential and will be retained by the Monitoring Officer.

1. To whom did you report your concern? ☐ Line Manager  
☐ Whistleblowing Officer  
☐ Trade Union Rep  
☐ Other (please specify)

2. Were you satisfied with the way in which your concern was dealt with by that person?

- ☐ Yes  
☐ No

3. If no, please explain why: .....

4. Were you aware of the Whistleblowing Policy at the time you raised your concern?

- ☐ Yes  
☐ No

5. If yes, where did you see a copy of the Whistleblowing Policy?

- ☐ Line Manager  
☐ Whistleblowing Officer  
☐ Trade Union Rep  
☐ Intranet  
☐ Other (please specify)

6. Were you advised of how the concern was being dealt with and the outcome?

- ☐ Yes  
☐ No

7. Overall, are you satisfied with the way your concern has been managed within the Whistleblowing Policy?

- ☐ Yes  
☐ No

8. If no, please explain why: .....

Thank you for completing this questionnaire. Please return it to the Monitoring Officer via the Council's confidential Whistleblowing mailbox: [CEWhistleBlowing@carmarthenshire.gov.uk](mailto:CEWhistleBlowing@carmarthenshire.gov.uk). This mailbox is only viewed by the Deputy/Monitoring Officer in the Legal Department.

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Policies: Whistleblowing Policy  
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~~in the envelope provided.~~

## Appendix C

### WHISTLEBLOWING CASE STUDIES

The following case studies have been produced by Public Concern at Work (PCaW), the whistleblowing charity, which advises individuals on their whistleblowing dilemmas and organisations on their whistleblowing arrangements.

They are examples of whistleblowing concerns that individuals have raised in other organisations.

#### Case 1 – Fraud in the NHS

##### The Story

Tim coordinated training for an NHS Trust. He was concerned that his boss was hiring a friend of his to deliver training on suspicious terms which were costing the Trust over £20,000 a year. More courses were booked than were needed and the friend was always paid when a course was cancelled. Although Tim asked his boss to get a credit note as with other training contracts, he never did. Tim also couldn't understand why the friend was paid for training sessions delivered by NHS staff. One day when the boss was out, Tim saw the friend enter the boss' office and leave an envelope. His suspicions aroused, Tim peeked inside and saw that it was filled with £20 notes, amounting to some £2,000. Unsure what to do, Tim called Public Concern at Work. Tim said his boss had lots of influence in the Trust and he was unsure who to tell, particularly as the Trust was being restructured and none of the directors were secure in their posts. Tim also recognised that the cash in the envelope was so brazen that there could be an innocent explanation.

##### What PCaW advised

PCaW advised Tim that the options were either to go to a director of the Trust or to the NHS Counter-Fraud Unit. Either way, we advised Tim to stick to the facts and focus on specific suspect arrangements and payments. We also said he should avoid the temptation to investigate the matter himself. Tim said he felt much better and would decide what to do over the holiday he was about to take.

##### What happened

On his return, Tim raised his concerns with a director at the Trust, who called in NHS Counter Fraud. Tim's suspicions were right: his boss and the trainer pleaded guilty to stealing £9,000 from the NHS and each received 12 month jail terms suspended for two years.

#### Case 2 - Involving a Regulator

##### The Story

Ian worked as a safety inspector at an amusement park. He was responsible for maintaining one of the park's most popular rides. Every morning he would carry out a safety inspection on the ride and, if it passed, he would sign the ride off as safe in the log. During one inspection, he noticed that pins on the axles which kept the carriages stable had become loose. Ian thought this presented a serious risk and notified his managers.

After what Ian felt was not a thorough examination, the Operations Manager cleared the ride as safe. Ian was unhappy with this and the next day, as no corrective action had been taken, he again could not sign off the ride as safe. Again the Operations Manager



overruled Ian and he was assigned to other rides. Ian contacted us the same day. He was anxious that the weekend was coming up and that the park would be extremely busy. He was also worried that if he pursued the issue any further he would be dismissed.

#### **What PCaW advised**

PCaW advised Ian that they could contact the Health and Safety Executive (HSE) on his behalf and relay the information that he had given us without giving his name. However, it was more than likely that they would want to speak to him, if they felt that the situation was potentially serious. PCaW said they would explain Ian's anxieties about his position and ask the HSE to bear this in mind. Although he was unsure whether he would speak to the HSE, he asked us to make the initial contact. The HSE agreed that the situation sounded potentially serious. However, they told PCaW that they would need to speak to Ian. PCaW explained Ian's fears that if the HSE suddenly turned up to inspect this particular ride, his employers would easily put two and two together and he would be out of a job. The HSE assured us that if they were to carry out an inspection, it could be done in such a way as not to make Ian's role apparent. We went back to Ian and, after talking things through, he agreed that he would speak to the HSE.

#### **What happened**

Shortly afterwards the HSE made a 'routine' visit to the park during which they inspected the ride, along with several other rides. As a result of the inspection, the ride was suspended and the repairs were carried out.

### **Case 3 – Theft in a care home**

#### **The story**

FA worked as a care assistant in an old people's home. He and some of his colleagues were worried that SM, one of the managers, might be stealing cash from the residents. SM, looked after residents' pocket money and kept a record of when sums were paid out. FA was fairly sure that money was recorded as being given out to particular residents when they had received none.

After a while, he thought he had to raise the concern as the amount involved was adding up. After he raised his concerns with the owners of the home, an investigation quickly found FA was right, SM was dismissed and the police were called in. Relations within the home were tense as some of SM's friends strongly objected to the whistleblowing. Within weeks, FA was suspended over allegations that he had mistreated the residents. He rang us.

#### **What PCaW advised**

We advised that he should bite his lip and deal with these allegations squarely. Although the investigation found they had no substance, the owners decided to transfer FA to another home. FA was very unhappy and rang us again. We helped him draft a letter to the owners explaining that he wanted to stay at that home and that transferring him after he had blown the whistle would give out the wrong messages to other staff.

#### **What happened**

The owners reconsidered and FA stayed at the home. When FA rang to tell us that SM had been convicted of stealing £1400 from the residents, he said the atmosphere in the home was now much improved.

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