

Document Pack



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FRIDAY 10TH MARCH 2017

TO: ALL MEMBERS OF THE STANDARDS COMMITTEE

I HEREBY SUMMON YOU TO ATTEND A MEETING OF THE STANDARDS COMMITTEE WHICH WILL BE HELD IN THE CHAMBER, COUNTY HALL, CARMARTHEN AT 10:00AM ON FRIDAY 17TH MARCH 2017, FOR THE TRANSACTION OF THE BUSINESS OUTLINED ON THE ATTACHED AGENDA.

Mark James CBE

CHIEF EXECUTIVE



PLEASE RECYCLE

Democratic Officer:	Janine Owen
Telephone (direct line):	01267 224030
E-Mail:	janineowen@carmarthenshire.gov.uk
Ref:	AD016-001

STANDARDS COMMITTEE

MEMBERSHIP: 9 MEMBERS

Independent Members (5)

- | | | |
|----|-----------------------------|-----------------------------|
| 1. | Mrs. Mary Dodd | |
| 2. | Mr. Christopher A. Downward | Chair of the Committee |
| 3. | Mr. M. Andre Morgan | Vice Chair of the Committee |
| 4. | Mr. Alun. Williams | |
| 5. | Vacancy | |

Community Committee Member (1)

- | | |
|----|------------------------------|
| 1. | Councillor Jeanette Gilasbey |
|----|------------------------------|

Elected Members of the County Council (3)

- | | |
|----|---------------------------------|
| 1. | Councillor Susan M. Allen |
| 2. | Councillor B.A. Louvain Roberts |
| 3. | Councillor Gareth B. 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 13TH JANUARY 2017 5 - 8
4. CODE OF CONDUCT CASEBOOK 9 - 20
5. CODE OF CONDUCT TRAINING FOR COUNTY COUNCILLORS 21 - 74
6. CODE OF CONDUCT TRAINING FOR TOWN AND COMMUNITY COUNCILLORS 75 - 128
7. STANDARDS COMMITTEE FORWARD WORK PROGRAMME 129 - 134
8. 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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STANDARDS COMMITTEE 13TH JANUARY 2017

PRESENT: Mr C.A. Downward (Chair)

Councillors:

S.M. Allen, B.A.L. Roberts and G.B. Thomas

Independent Members:

M. Dodd, M.A. Morgan, A. Williams

Community Member:

J. Gilasbey

The following Officers were in attendance:

L.R. Jones, Head of Administration and Law
R. Edgecombe, Acting Legal Services Manager
J. Owen, Democratic Services Officer

Chamber, County Hall, Carmarthen – 10:00 - 10:40am

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. DECLARATIONS OF PERSONAL INTEREST

Councillor	Minute Item(s)	Nature of Interest
J Gilasbey	5. Application for Dispensation by Councillor P. N. Thompson	Cllr J Gilasbey is a Councillor for Kidwelly Town Council.

3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE 9TH SEPTEMBER, 2016

RESOLVED that the minutes of the meeting of the Committee held on the 9th September, 2016 be signed as a correct record.

4. APPLICATION FOR DISPENSATION BY COUNCILLOR S. HUSSAIN

The Committee was reminded that at its meeting held on the 11th September 2015 (minute 12 refers) it had granted dispensation, until the 4th December 2016, to Councillor S. Hussain, a member of Cwmamman Community Council to speak, but not vote, at meetings of Cwmamman Town Council in relation to any discussions regarding the relocation of Glanamman Post Office.

It was reported that a dispensation was sought as Councillor Hussain had a personal interest in the matter by virtue of the following paragraphs in that the proposed site of the relocated Post Office was a petrol station owned by Councillor Hussain;-

1. 10(2)(a)(i) as the matter relates to or is likely to affect a business carried on by him,
2. 10(2)(a)(ix)(bb) as the matter relates to or is likely to affect a company in which he holds a position of general control or management,
3. 10(2)(b)(i) as the matter might reasonably be regarded as affecting his well-being.

Councillor Hussain's interest was also prejudicial as a member of the public with knowledge of Councillor Hussain's business and financial interest in the issue would reasonably regard that interest as so significant as to be likely to prejudice his judgement of the wider public interest.

Councillor Hussain had accordingly requested that a dispensation be granted under regulation 2 (f) of the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 in that his participation was justified because of his particular role or expertise.

Councillor Hussain submitted that his experience of such post office re-locations and the financial implications that result was unique amongst members of the Council and that if he were unable to participate the Council would be at risk of making uniformed decisions.

The general consensus of the Committee was that they would have liked to have had more information about the business that was to be transacted at the Town Council meeting/s in relation to the matter and that any future applications that Councillor Hussain submits should include more detailed information in order to help the Committee to make an informed decision.

Following a detailed discussion, it was

RESOLVED that dispensation be granted under Regulation 2(f) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001 to Councillor Shahid Hussain to **SPEAK BUT NOT VOTE** at meetings of Cwmamman Town Council in relation to any discussions regarding the relocation of Glanamman Post Office until 4th May, 2017.

5. APPLICATION FOR DISPENSATION BY COUNCILLOR P. N. THOMPSON

At this point Councillor J Gilasbey declared an interest and left the room.

The Committee considered an application submitted by Councillor Phillip Nigel Thompson of Kidwelly Town Council for the grant of a dispensation under the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to speak and make written representations at meetings of Kidwelly Town Council in relation to the following:-

- 1) Councillor Thompson's involvement with the Ynghyd Community Interest Company (of which he is a director) in particular the asset transfer of Kidwelly Town Council's public conveniences and
- 2) Councillor Thompson's involvement with the Kidwelly Community Hub of which he is a member of the Management Committee.

It was reported that a dispensation was sought as Councillor Thompson had a personal interest in the matter by virtue of the following paragraphs of the Code of Conduct:-

- 1) 10(2)(a)(ix)(bb) as the matter relates to or is likely to affect a company in which he holds a position of general control or management
- 2) 10(2)(a)(ix)(ee) as the matter relates to or is likely to affect a private association in which he holds a position of general control or management

Councillor Thompson's interest was also prejudicial as a member of the public, with full knowledge of the facts, would reasonably regard that interest as so significant as to prejudice the Councillor's judgement of the public interest.

Councillor Thompson had accordingly requested that a dispensation be granted under regulation 2 (d)(f)(g) and (h) of the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001.

With regard to Councillor Thompson's personal interest in the Ynghyd Community Interest Company, the Acting Legal Services Manager informed the Committee that a Community Interest Company (CIC) was a limited company, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage.

Following a query raised regarding the difference between speaking and making a written representation, the Head of Administration and Law reminded the Committee of the relevant extracts from the Code of Conduct for Members

In light of the query relating to the dispensation to make written representations, it was suggested that the application form be amended to provide clarity for both the applicant and the Committee considering the application. The Acting Legal Services Manager stated that he would consider amending the form.

Following a detailed discussion it was;

UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2(d)(f)(g) and (h) of the Standards Committees (Grant of Dispensations) (Wales) Regulations to Councillor Philip Nigel Thompson to **SPEAK BUT NOT MAKE WRITTEN REPRESENTATIONS** at meetings of Kidwelly Town Council in relation to any discussion regarding the asset transfer of Kidwelly Town Council's public conveniences and the operation by Ynghyd CIC and Kidwelly Community Hub, and that the Dispensation be valid until the 4th May 2017.

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.**

Councillor J. Gilasbey re-joined the meeting.

The Chair announced that he had presented the Annual Report of the Standards Committee for the 2015/16 period to the County Council on the 9th November 2016 where it was received.

Following a query, the Acting Legal Services Manager stated that he would e-mail the future Standards Committee meeting dates to Members.

CHAIR

DATE

STANDARDS COMMITTEE

17th MARCH 2017

Code of Conduct Casebook

Recommendations / key decisions required:

- That the Committee considers the report.

Reasons:

- The subject matter of this report falls within the remit of the Committee.

Scrutiny Committee recommendations / comments: NOT APPLICABLE
Executive Board decision required: NO
Council Decision required: NO

Executive Board Member Portfolio Holder: Cllr. Emlyn Dole (Leader)

Directorate: Chief Executive's Name of Head of Service: Linda Rees Jones Report Author: Robert Edgecombe	Designations: Head of Administration & Law Acting Legal Services Manager	Tel Nos. / E-Mail Addresses: 01267 224010 lrjones@carmarthenshire.gov.uk 01267 224018 rjedgeco@carmarthenshire.gov.uk
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EXECUTIVE SUMMARY

STANDARDS COMMITTEE

17th MARCH 2017

Code of Conduct Casebook

The Public Services Ombudsman for Wales has published the latest issue of the 'Code of Conduct Casebook' which sets out summaries of code investigations which have been brought to a conclusion during the preceding quarter.

The most recent issue contains two such summaries, relating to members of Monmouthshire County Council and Tywyn Town Council.

The committee is asked to note the issues that gave rise to the two complaints, the subsequent outcomes and the reasons for those outcomes.

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: Linda Rees Jones Head of Administration & Law

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

CONSULTATIONS

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

Signed: Linda Rees Jones Head of Administration & Law

1. Scrutiny Committee – N/A
2. Local Member(s) – N/A
3. Community / Town Council – N/A
4. Relevant Partners – N/A
5. Staff Side Representatives and other Organisations – N/A

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

THESE ARE DETAILED BELOW:

Title of Document	File Ref No. / Locations that the papers are available for public inspection
Legal file	DPSC-148 / Legal Services, County Hall

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The Code of Conduct Casebook

Issue 11 January 2017

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Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers October to December 2016.

Case summaries

No evidence of breach

Monmouthshire County Council – Promotion of equality and respect

Case Number 201602663 – Report issued in November 2016

The Ombudsman received a complaint that during a debate condemning hate crime at a Council meeting on 28 July 2016, a member of Monmouthshire County Council (“the Councillor”) spoke to defend and justify racially offensive language when, in his view, it was used without malice. Furthermore, the Councillor used examples of such language during his speech and caused offence.

The investigation found that Members have a duty to consider any motion proposed, subjecting it to critical analysis and scrutiny. The extent to which that function is exercised should not be restricted by the nature of the motion in question, no matter how sensitive, and the enforcement of such a restriction would unjustifiably affect a member’s freedom of expression.

The Ombudsman found that during his address, the Councillor stated that he supported the motion but requested a definition of the term hate crime. At no point did the Councillor suggest that racism, xenophobia or hate crime should be tolerated. The Ombudsman also found that whilst the Councillor’s examples were clumsily worded, there was no evidence that he used overtly racist, xenophobic or hateful language, nor were his comments directed at one person or a group of people.

The Ombudsman found that there was no breach of the Code of Conduct.

No action necessary

Tywyn Town Council – Disclosure and registration of interests

Case Number 201600999 – Report issued in November 2016

A complaint was made that Former Councillor X failed to declare a personal and prejudicial interest at a meeting of the Ynysymangwyn Caravan Park Committee on 16 March 2016. Former Councillor X's interest arose as the owner of a nearby caravan park.

On 10 February, the Monitoring Officer had advised the Former Councillor that he had a prejudicial interest in this Committee. The Former Councillor subsequently applied for a dispensation from the Council's Standards Committee to attend these meetings, which was rejected.

The Ombudsman invited the Former Councillor for interview, but on 4 October he tendered his resignation as a Councillor. The Ombudsman considered that the Former Councillor's conduct may have breached elements of the Code in relation to having regard to advice given by the Monitoring Officer; having a personal interest at meetings; declaring a personal interest and withdrawing from the meeting. However, in view of Former Councillor X's resignation, no further action was required.

Referred to Standards Committee

There are no summaries in relation to this finding

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

More information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to Matthew.Aplin@ombudsman-wales.org.uk or Lucy.John@ombudsman-wales.org.uk or sent to the following address:

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

Tel: 0300 790 0203

Fax: 01656 641199

e-mail: ask@ombudsman-wales.org.uk (general enquiries)

Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

Further information about the service offered by the Public Services Ombudsman for Wales can also be found at www.ombudsman-wales.org.uk

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STANDARDS COMMITTEE

17th MARCH 2017

Code of Conduct training for County Councillors

Recommendations / key decisions required:

- That the Committee considers the report.

Reasons:

- The subject matter of this report falls within the remit of the Committee.

Scrutiny Committee recommendations / comments: NOT APPLICABLE
Executive Board decision required: NO
Council Decision required: NO

Executive Board Member Portfolio Holder: Cllr. Emlyn Dole (Leader)

Directorate: Chief Executive's Name of Head of Service: Linda Rees Jones Report Author: Robert Edgecombe	Designations: Head of Administration & Law Acting Legal Services Manager	Tel Nos. / E-Mail Addresses: 01267 224010 lrjones@carmarthenshire.gov.uk 01267 224018 rjedgeco@carmarthenshire.gov.uk
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EXECUTIVE SUMMARY

STANDARDS COMMITTEE

17th MARCH 2017

Code of Conduct training for County Councillors

Following the local government elections in May 2017 arrangements have been made to hold a training session for newly elected councillors on the members' code of conduct.

This session is currently scheduled to take place on the 15th May 2017. A separate induction session for any new members of the Standards Committee is also currently scheduled for the 9th June 2017.

As in previous years it is proposed to utilise training materials developed by the Welsh Local Government Association when delivering this training.

Copies of both the training presentation and the facilitators pack are attached for the attention of committee members.

Co-opted members of the committee would be welcome to attend both training sessions.

DETAILED REPORT ATTACHED?

NO – however, training presentation and the facilitators pack are attached with this item

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: Linda Rees Jones Head of Administration & Law

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

CONSULTATIONS

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

Signed: Linda Rees Jones Head of Administration & Law

1. Scrutiny Committee – N/A
2. Local Member(s) – N/A
3. Community / Town Council – N/A
4. Relevant Partners – N/A
5. Staff Side Representatives and other Organisations – N/A

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

THESE ARE DETAILED BELOW:

Title of Document	File Ref No. / Locations that the papers are available for public inspection
Legal file	DPSC-148 / Legal Services, County Hall

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Member Induction Wales 2017



Ethics and Standards

Briefing Pack for Facilitators



To be delivered by Monitoring officers with - if possible - a senior experienced member. To be used in conjunction with the video of the Ombudsman's contribution supplied on a memory stick. Members should also be provided with the copies of the Authority's Code of Conduct and Ombudsman's guidance.

Duration 2.5 Hours not including break

Workshop Objectives

The purpose of this session is:-

- To provide members with an overview of the ethical framework and Code of Conduct

At the end of this session, members should:-

- Understand the importance of the ethical framework and the requirement upon them to work within it according to the Code of Conduct
- Understand how to act within the code particularly in relation to declaring interests.
- Understand what will happen if the code is breached
- Know where to go for advice and information

Programme:-

1. Introductions: Programme description and objectives 10 mins
2. Introduction and questionnaire (questions only) 20 mins
3. Slides 1-11 incorporating questionnaire answers 40mins
4. Break
5. Slides 12-18 Interests and exercise 35 mins
6. Slides 19-22 Predetermination, breaching the code and further information. To include the Ombudsman's video. 45 mins

Notes to Accompany Power Point Slides

Slide 1: Title and introduction

In Local Government there are principles and standards that underpin the way members and officers interact with each other and the public. These ensure that everything that you do will reflect well on you and your authority. This workshop will help you understand those standards and how you should apply them and what can happen to you if you don't.

Slide 2: Ethical Governance

As a member, how your behaviour is perceived by the public and the media impacts upon your ability to represent local government and the communities you serve. The public needs to feel confident that you are living up to the high standards that they have a right to expect from you.

Slide 3: Consequences for Councillors

These are all real quotes from the press and a Council's website over the last 2-3 years. Clearly it's important for your personal reputation and the reputation of the Council that you understand your responsibilities in this area. Facilitators might want to add some press cuttings of their own.

NB:(QUOTE 1 is from BBC Wales website 2013 article re Powys; Quote 2 is 2016 article from England - North Hertfordshire website; and Quote 3 is Newham Recorder 2016)

Slide 4: Exercise (see appendix 1)

Members undertake the exercise in groups using copies of **appendix 1**. Allow each group to discuss the issue then give their answer. **Do not give out the answers (appendix 2)** they will be provided in the commentary to the PowerPoint. As each answer emerges, flag this up against the original questions. Give out **appendix 2** at the end of the session so that members have something to refer to in the future.

Slide 5: Your Responsibilities Are enshrined in this legislation. The Local Government Act of 2000 established a new ethical framework, the Model Code of Conduct (Wales) Order in 2008 said that all authorities would have a mandatory code of conduct based on a national model.

Paragraph 6.1(c) of the Code which previously required a member to report to the PSOW and the Monitoring Officer ("the MO") any conduct by another member which they reasonably believe breaches the code has been removed. Duty is now to report to MO only but a Member is still entitled to report a breach to the PSOW if considers it is serious.

10(2)(b) of the code which previously provided that there is a personal interest if "a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division" has been removed.

Slide 6: The Ethical Framework

Originated in the Nolan Committee 1997 Report on *Standards in Public Life* which set out the earliest version of these standards. On the slide are the most recent versions as set out in The Conduct of Members (Wales) Order 2001.

Remind members that this is an answer to **Question 1 of the questionnaire**

Use the answers to question 1 in appendix 2 to expand the definitions

Slide 7: The Code of Conduct

Is underpinned by the ethical framework.

Remind members of the content of your Code of Conduct – hand out copies if necessary

If you follow the Code of Conduct you should not go wrong, but if you don't understand it - ask the monitoring officer. One common misunderstanding is that the code only applies to you when you are on official business. THIS IS NOT THE CASE.

Slide 8: The Code applies to you whenever you are ...

Slide 9: And Also...

When not 'doing your job' as a member

Remind Members that this is an answer to Question 6 of the questionnaire

Slide 10-12: General rules you need to follow under the code

Provide Members with a copy of the Ombudsman's guidance to expand the definitions
Give the **answers to question 2, 4 and 6 of the questionnaire** explaining which elements of the code have been breached.

Slide 13: Interests

Slide 14-16: Personal Interests

Refer members to the Ombudsman's guidance,

Give the **answers to Question 3, of the questionnaire**

Outline the procedure of registering interests in your authority

Slide 17: Who is a 'close personal associate'

Refer members to the Ombudsman's guidance

Slide 18: What do you do if you have a Personal Interest?

Slide 19: Prejudicial Interests

Ask members of further examples of prejudicial interests

Slide 20: What do you do if you have a Prejudicial interest?

Slide 21: Interests exercise Appendix 3

Distribute the scenarios and ask members to work in small groups or pairs to consider if there is an interest, the nature of that interest and the action the member should take.
Suggested answers are in **Appendix 4.**

Slide 22: Predetermination and Predisposition

Definitions from the Standards Board for England Website

It is not a problem for councillors to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. They may even have been elected specifically because of their views on this particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission.

However, the councillor must be open to the possibility that, however unlikely, they will hear arguments during the debate about the issue that will change their mind about how they intend to vote. As long as they are willing to keep an open mind about the issue they are entitled to take part in any vote on it.

What is predetermination or bias?

Predetermination is where a councillor's mind is closed to the merits of any arguments which differ from their own about a particular issue on which they are making a decision, such as an application for planning permission. The councillor makes a decision on the issue without taking them all into account.

If councillors are involved in making a decision they should avoid giving the appearance that they have conclusively decided how they will vote at the meeting, such that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

Rarely will membership of an organisation on its own, such as a national charity, amount to apparent bias. This is unless the organisation has a particular vested interest in the outcome of a specific decision that a councillor is involved in making, or the decision is quasi-judicial in nature.

Bias:-

Kelton v Wiltshire [2015] EWHC 2853 (Admin);

The developers had identified a local housing association as a prospective partner to provide the affordable housing segment of the proposed development. One of the councillors (M) involved in the subsequent planning committee meeting was a director of the association. He declared that he was a member of its board but, because it was only a prospective partner rather than the applicant for permission, he decided to vote on the planning application, which was passed by one vote. Had he withdrawn from the debate and not voted, the application would have been refused. The association subsequently became the developers' preferred bidder for the affordable housing.

M's participation in the planning meeting gave rise to an appearance of potential bias. It was plainly in the association's interests, and those of M as director, for the planning application to be approved. The association had committed time, resources and expertise in working with the developers on the affordable housing. It was highly unlikely that it would have done so unless it believed that it would be awarded a contract once

permission was granted. Apparent bias could arise even in a case where a councillor had not voted, *Darker Enterprises v Dacorum BC [1992] C.O.D. 465* considered. M's private interests were engaged by the vote and it had been wrong for him to have participated in the meeting. The decision to grant planning permission was, accordingly, quashed.

Making the decision

There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.

When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome as long as they are prepared to consider all the arguments and points made about the specific issue under consideration.

Also the importance of appearances is generally more limited when the context of the decision-making is not judicial or similar to judicial. Planning decisions are not similar to judicial decisions, they are administrative. Therefore councillors can appear strongly predisposed for or against a particular planning decision.

Slide 23

Kelton v Wiltshire [2015] EWHC 2853 (Admin);

The developers had identified a local housing association as a prospective partner to provide the affordable housing segment of the proposed development. One of the councillors (M) involved in the subsequent planning committee meeting was a director of the association. He declared that he was a member of its board but, because it was only a prospective partner rather than the applicant for permission, he decided to vote on the planning application, which was passed by one vote. Had he withdrawn from the debate and not voted, the application would have been refused. The association subsequently became the developers' preferred bidder for the affordable housing.

M's participation in the planning meeting gave rise to an appearance of potential bias. It was plainly in the association's interests, and those of M as director, for the planning application to be approved. The association had committed time, resources and expertise in working with the developers on the affordable housing. It was highly unlikely that it would have done so unless it believed that it would be awarded a contract once permission was granted. Apparent bias could arise even in a case where a councillor had not voted, *Darker Enterprises v Dacorum BC [1992] C.O.D. 465* considered. M's private interests were engaged by the vote and it had been wrong for him to have participated in the meeting. The decision to grant planning permission was, accordingly, quashed.

Slide 24: How the Code is Policed

This is the answer to question 8

Use the answer in **Appendix 2** to explain the roles of the different bodies

Slide 25: What happens if you breach the Code?

This is the procedure if there is a breach of the code

Video 5 mins

Slide 26: A further exhortation to ask the Monitoring Officer if members are in any doubt about ethical behaviour!

Appendix 1

Questionnaire

Answers are not provided immediately but through a PowerPoint presentation which also gives greater detail and background and which can be kept by members for reference.

Question 1

Can you set out the ten principles of conduct for Members which underpin the Code of Conduct?

Question 2

The Council is involved in negotiations with a private contractor to develop a regeneration scheme involving the building of a leisure, residential and retail development in two Council wards. The contractor's Managing Director has invited members of Regeneration Scrutiny Committee (some of whom are also members of the Planning Committee) and officers from the Regeneration Department to a presentation of its company's proposals in a corporate box at a premiership football ground. There will be a champagne reception followed by a premiership football match. Should they accept the offer?

Question 3

A Councillor is an active member of Greenpeace and a member of the Council's Planning Committee. The Council is supportive of the local nuclear power plant and is engaged in discussions to develop a site to process nuclear waste from other parts of the Country. What kind of interest, if any, does the Member have in those discussions?

Question 4

A man wishes to move his family to a Council house closer to their elderly family members and want to move as soon as possible. He approaches a Councillor, who the man knows through their mutual membership of the local football team, and who is also the chair of

the Housing Scrutiny Committee. The Councillor promises to take the matter forward. Processing particular housing applications are dealt with by housing allocations officers and not by Councillors. The Councillor tells a Housing Officer of the Council to elevate the application to the top of the waiting list. The area that the family wish to move to is based in the Councillor's Ward.

Is the Councillor breaching the Code of Conduct?

Question 5

A member of the public has written a letter of complaint about a Member. She said that last Saturday she was working at an evening function at a cricket club and bar when a man swore at her and called her an offensive name. On leaving the function the man kicked the door cracking some glass in the door panel. Another person who witnessed the incident told her the man was a local Councillor.

Do you believe the Code of Conduct has been breached and what might an appropriate response be to the alleged misconduct?

Question 6

A Councillor built dog-kennels to accommodate 20 dogs in the basement of her home without first obtaining planning permission. She placed an advert in the local paper that stated that in March, the Kennels would be ready to open, and that they were fully licenced. She had not obtained a licence when she placed the advert. She then submitted a Planning Application in July. She did not state in her application that she had an interest as a councillor.

In September, before the meeting of the Council's planning committee she emailed a member of that committee about the application, requesting that they should support it. She attended the Planning Committee meeting and spoke before her application was debated but then remained in the meeting throughout the debate on her application.

Has the Councillor breached the Code of Conduct?

Question 7

Can you set out the Council's processes for: -

1. Declaring and registering Members' interests.
2. Accepting offers of gifts or hospitality by members

Question 8

Can you explain the roles of the following:-

1. The Monitoring Officer

2. The Ethics & Standards Committee
3. The Public Services Ombudsman for Wales
4. The Adjudication Panel for Wales

Appendix 2

Questionnaire Answers

Question 1

Can you set out the ten principles of conduct for Members which underpin the Code of Conduct?

Answer

The starting point for much of the work was the 1997 Committee on Standards in Public Life (known as The Nolan committee). As a result of the Nolan Committee's recommendations, local government adopted a new ethical framework. The latest version of this in Wales is set out in "The Conduct of Members (Principles) (Wales) Order 2001.

The ten general principles of conduct for Members:-

1. Selflessness

Members must act solely in the public interest. They must never use their position as Members to improperly confer advantage on themselves or to improperly confer 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 awards and benefits, Members must make decisions on merit. Whilst Members must have regard to the professional advice of officers and must 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 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 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.

Question 2

The Council is involved in negotiations with a private contractor to develop a regeneration scheme involving the building of the leisure, residential and retail development into Council wards. The contractor's Managing Director has invited members of Regeneration Scrutiny Committee (some of whom are also members of the Planning Committee) and officers from the Regeneration Department to a presentation of its company's proposals in

a corporate box at a premier ship football ground. There will be a champagne reception followed by a premier ship football match. Should they accept the offer?

Answer

The Members (and indeed the officers) should decline the offer as acceptance could potentially breach paragraph 6 of the Code i.e. you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. The perception of members of the public will be that by providing the hospitality, the contractor is attempting to influence the Council's decision about awarding the regeneration contract. Members of the public may also consider that at a future date, members of the Planning Committee when they consider the development, will not make a decision on the planning issues but instead be influenced by the generous hospitality offered.

In addition, Members should ensure that the fact that the offer had been made and the fact that it had been declined, is notified to the Monitoring Officer in case the issue became contentious at a later date.

If a Member had accepted such hospitality contrary to any advice, then a prejudicial interest would be incurred in respect of that contractor and any potential decisions relating to the contract or the planning development etc.

The hospitality would have a value of over your authority's limit and would have to be notified to the Monitoring Officer for inclusion in the register of gifts and hospitality. The duty is on the member to be aware of this limit

Question 3

A Councillor is an active member of Greenpeace and a member of the Council's Planning Committee. The Council is supportive of the local nuclear power plant and is engaged in discussions to develop a site to process nuclear waste from other parts of the Country. What kind of interest, if any, does the Member have in those discussions?

Answer:

This Member is likely to have a personal interest under paragraph 10 (2)(viii)(cc) by virtue of the membership of Greenpeace (a body whose principal purposes include the influence of public opinion or policy). The Member should refer to that interest in any written or oral representations referring to the matter under paragraph 11 (2)(a) and (b). It is probably unlikely that the interest becomes prejudicial. It would have to be considered when the Planning Committee determined any application on the plant. Greenpeace would not be the applicant; its financial position would not be affected and presumably

neither would the wellbeing of the Member concerned. Greenpeace tends to have views on waste disposal nationally rather than specifically so that the interest declared at the planning meeting is likely to be personal, but not prejudicial. However it needs careful consideration.

In addition, notification of the Councillor's membership of Greenpeace should properly have been sent to the Monitoring Officer for inclusion in the public Register of Members Interests because it is a body whose principal purposes include the influence of public opinion or policy.

Question 4

A man wishes to move his family to a Council house closer to their elderly family members and wants to move as soon as possible. He approaches a Councillor, who the man knows through their mutual membership of the local football team, and who is also the chair of the Housing Scrutiny Committee. The Councillor promises to take the matter forward. Processing particular housing applications are dealt with by housing allocations officers and not by Councillors. The Councillor tells a Housing Officer of the Council to elevate the application to the top of the waiting list. The area that the family wish to move to is based in the Councillor's Ward.

Is the Councillor breaching the Code of Conduct?

Answer:

There are three possible breaches of the Code.

1. 4(d) You must not do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of your authority.
2. 6(1)(a) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
3. 7 (a) In your official capacity or otherwise you must not use or attempt to use your position improperly to confer on or secure for yourself or any other person an advantage or create or avoid for yourself or any other person, a disadvantage.

In addition, the Councillor may have failed to declare a personal interest which is likely to be prejudicial in that he knows the man involved. This may fall into the category of close personal associate and would have to be carefully considered by the councillor.

It is not acceptable for any Member to seek preferential treatment for a constituent by telling the Housing Officer they must prioritise a particular application. Whilst it

is appropriate for Members to pass on constituents' concerns to the relevant officer and to ensure that the relevant processes are being undertaken in a timely fashion etc, it is not acceptable to interfere with that process as this undermines priorities agreed by the Council and established in other Council procedures and puts the Member concerned in breach of the Code of Conduct. A Member needs to also remember that when contacting an officer on a matter they must disclose any personal interest in the matter they are contacting them about.

Question 5

A member of the public has written a letter of complaint about a Member. She said that last Saturday she was working at an evening function at cricket club and bar, when a man swore at her and called her a rude name. On leaving the function the man kicked the door cracking some glass in the door panel. Another person who witnessed the incident told her the man was a local Councillor.

Do you believe the Code of Conduct has been breached and what might an appropriate response be to the alleged misconduct?

Answer

Mostly, the Code of Conduct applies to a Councillor whenever he or she is conducting the business or is present at a meeting of the authority or acting or claim to act or give the impression he or she is acting in the role of an elected Member or representative of the authority.

However, the Code of Conduct affects Members at all times and in any capacity in respect of paragraph 6 (1)(a) not conducting yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute and 7 (a) or (b) relating to using your position improperly to confer an advantage on yourself or another person or create a disadvantage to another person or using the resources of your authority improperly etc.

Here, the behaviour is clearly bringing the office and authority into disrepute and is a breach of paragraph 6.

It might be that the complainant would wish for an informal resolution by the Monitoring Officer. However, both parties would have to agree to the same and would not result in the sanction of the Member concerned. It is usually only suitable where an apology would be an acceptable solution or perhaps an agreement by the Member concerned to undergo further training regarding suitable behaviour under the Code.

However, there has been criminal damage in that the glass in the cricket club door was broken. It may be that there would be criminal proceedings in that regard and the complainant would not wish for an informal resolution and would wish to make a complaint directly to the Ombudsman.

Question 6

A Councillor built dog-kennels to accommodate 20 dogs in the basement of her home without first obtaining planning permission. She placed an advert in the local paper that stated that in March, the Kennels would be ready to open, and that they were fully licenced. She had not obtained a licence when she placed the advert. She then submitted a Planning Application in July.

In September, before the meeting of the Council's planning committee, where the Councillor's application was to be considered she emailed a member of that committee about the application, requesting that they should support it. She attended the Planning Committee meeting and spoke for 3 minutes before the application was debated and remained in the meeting throughout the debate on her application.

Has the Councillor breached the Code of Conduct?

(1) Contrary to Paragraph 6(1)(a) of the code (You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute) the Councillor carried out building works at her home without first applying for planning permission.

(2) Contrary to Paragraphs 10(1) of the code the Councillor (you must in all matters consider if you have a personal interest) failed to consider whether she had a personal interest in the Planning Application and whether she was required to disclose that interest when she e-mailed a member of the planning committee concerning the said Planning Application

(3) Contrary to Paragraphs 11(2)(a) (Where you have a personal interest in any business of your authority and you make written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication) of the Code of Conduct, the Councillor failed to include details of her personal interest in the planning application or in her written representations contained in her e-mail

(4) Contrary to Paragraph 14(1)(c) (not to influence that business) and / or Paragraph 14(1)(d) of the Code of Conduct (not to make written representations about that business), the Councillor sought to influence a decision about her Planning Application by her e-mail to the Councillor who considered the Councillor's Planning Application as a Member of the Planning Committee (despite having a personal interest in the said Planning Application and a prejudicial interest by virtue of Paragraph 12(1) of the Code of Conduct

(5) Contrary to Paragraph 6(1)(a) of the Code of Conduct, the Councillor advertised the Kennels at as licensed albeit they were not licensed and therefore misrepresented the position.

(6) The councillor may have had the right to speak at the planning committee meeting and to make written representations to that meeting if a member of the public had a right to make representations, but not to write to members of the committee without declaring that interest. She should also have declared her interest to the meeting before she spoke and then left the meeting after she had spoken.

Question 7

Can you set out the Council's processes for:

3. Declaring and registering Member's interests.
4. Accepting offers of gifts or hospitality.

Answer

The law and the Council's Code of Conduct require Members to declare personal interests. Some personal interests have to be recorded in the statutory public register within 28 days of a Member's election or appointment to office. They must be updated by the Member within 28 days of any change.

There is an exemption from having to declare "sensitive information" upon which you can seek advice of the Monitoring Officer. The Monitoring Officer sends the Members information about the relevant form and reminds them to make updates regularly.

Members of the public are allowed to inspect the entries in the public register.

Separately, in oral and written communications as well as at meetings of the Council, Members are obliged to declare personal and prejudicial interests that are relevant to the matter being discussed in written or oral communications or as part of decisions made at committee and other meetings. Those interests are either noted by the officers or Members concerned and in relation to meetings are contained within the minutes.

The Monitoring Officer also maintains a public register of gifts and hospitality accepted by Members. Currently, the level at which any gifts and hospitality accepted must be registered is [the level is set by each individual authority]. [In certain authorities it may be that the Ethics and Standards Committee has also indicated it would be good practice for Members to notify the Monitoring Officer of offers of gifts or hospitality that have been declined in case there may be contentious at a future date].

Question 7

Can you explain the roles of the following:-

1. The Monitoring Officer
2. The Ethics & Standards Committee
3. The Public Services Ombudsman for Wales
4. The Adjudication Panel for Wales

Answer

1. Every principal authority in Wales (County Councils and County Borough Councils) must appoint a Monitoring Officer. The Monitoring Officer is responsible for maintaining ethical standards and advising and training Members on the Code of Conduct. The Monitoring Officer supports the work of the Council's Standards Committee. The Monitoring Officer is also responsible for advising and training Community Council Members on the Code of Conduct. In effect, the Monitoring Officer, in partnership with the Ethics and Standards Committee is the primary source of advice and guidance for both Members and Officers on ethical and standards issues and the operation of the Code of Conduct.
2. The Ethics & Standards Committee. Legislation sets out the requirements that every local authority must have an Ethics & Standards Committee. Regulations govern their composition, their powers and procedures. There are [again each committee will vary in size in each authority] members on the Committee which must be chaired by an independent Member and there must be a majority of independent members to establish a quorum. In this authority there are [] independent members, [] elected members and [] Community Council representatives. Tell members how often your committee meets and what its remit is as set out in the constitution. The committee has powers to determine matters relating to alleged breaches of the Code of Conduct reported to them by the Public Services Ombudsman for Wales. They also grant dispensations by enabling participation in business for Members which would otherwise be prohibited by the Code. Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 – provides for the Monitoring Officer to refer a matter to another authority's Standards Committee with the written consent of the Chair. Provides for joint standards committees to be established.
3. The Public Services Ombudsman for Wales investigates complaints made by members of the public about the way they have been treated by a public body and promotes good administration and high standards of conduct. He also investigates complaints alleging a Councillor has breached the Code of Conduct. Legislation sets out how he is able to decide whether to investigate complaints and how his report

is then presented either to a Council's Ethics & Standards Committee or the Adjudication Panel for Wales.

4. The Adjudication Panel for Wales is an independent body established under Part 3 of the Local Government Act 2000. Its role is to form tribunals to consider whether elected Members or co-opted Members of County Borough Councils, Police, Fire and Rescue and National Park Authorities in Wales have breached their authority's statutory Code of Conduct. The Panel will also hear appeals by Members against decisions of their authority's Standards Committee. A Member wishing to appeal against the decision of a Standards Committee will have to first request permission to appeal from the Adjudication Panel for Wales. Usually three Members sit on a Tribunal, Chaired by one of the Legal members of the Panel. In cases referred direct by the Ombudsman, there is a range of sanctions available to the Tribunal including suspension or partial suspension of a Member from office for up to one year or disqualification for up to five years.

Appendix 3

Interests exercise

1. Councillor Arkwright

Councillor Arkwright is the owner of the one of the largest convenience stores in a seaside town. He is a member of the Planning Committee and Licensing Committee. The following applications are on the agenda for the next meeting:

- (a) an application by a local petrol station to build an extension to include a larger shop with a better selection of convenience goods for their customers in the same town;
- (b) an application by the owner of a convenience store in another seaside town, 10 miles away, to build a car park on a piece of land behind the convenience store;
- (c) an application by the owner of a news agents on the outskirts of the town for a licence to sell alcohol. Councillors Arkwright is also involved in a legal dispute with the same person over the ownership of a piece of land.

2. Councillor Speed

- Councillor Stokes works voluntarily with a local youth cricket team. The team hold their training sessions on a field owned by the Council.
- The Council is considering selling the field to a local developer who wishes to build a block of flats. The final decision will be made by the Area Committee on the basis of a report by the Head of the Property Service. Councillor Stokes is the local member.
- Councillor Stokes will not be attending the meeting as he will be on holiday. However, he intends sending an e-mail to the Head of Property before going away, emphasising the importance of the cricket team to the local youth. He has also asked for a meeting with the estates officer dealing with the matter.

3. Councillor Jones.

Councillor Jones is a member of the Planning Committee. At its next meeting, the Committee will be considering the two following applications:

(a) An application by a company to build a small office block in a conservation area. One of the senior managers of the company is married to Councillor Jones' cousin.

(b) An application to build a new classroom for a local primary school. The Councillor is one of the school's governors.

Appendix 4

Interests exercise suggested answers

1. Councillor Arkwright

Does he have a personal interest?

- ✧ In all matters, a member must consider whether or not he/she has a personal interest whether that interest must be disclosed. [10. (1)]
- ✧ He would have a personal interest if it relates to, or is likely to affect any employment or business carried out by him. [10 (2)(a) (i)]
- ✧ Would a decision on the application affect Cllr. Arkwright's business?
- ✧ He will have an interest if it is reasonable to consider that a decision on that matter would affect the wellbeing or financial position of the member or anyone with whom he has a close personal association, to a greater extent than the majority of other inhabitants in the electoral division or ward. [10 (2) (c) (i)]
- ✧ *"Close personal associates can include someone with whom you have been in dispute, and where you may be regarded as having an interest in disadvantaging."* (Ombudsman's guidelines).

Is it a prejudicial interest?

- ✧ Is there an exemption under the code? [paragraph 12(2) & (3)]
- ✧ Would it be reasonable for a member of the public with knowledge of the relevant facts to regard the interest as being so significant that it is likely to prejudice the member's judgement of the public interest? [12(1)]
- ✧ *"Where there has been a dispute between you and an individual where that individual could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be inclined to vote accordingly, whether this is the case or not."* The Code of Conduct for members of local authorities in Wales, Guidance from the Public Services Ombudsman for Wales.

What should he do?

- ✧ If it is a prejudicial interest then a member must (unless he/she has obtained a dispensation from the Standards Committee) :
 - withdraw from the room or place where a meeting considering the business is being held. [14(1)] unless a member of the public has a right to make representations to the meeting and he can then exercise the same right to speak as long as he withdraws from the room before the matter is debated,

or he can make written representations to the meeting. He should still declare his interest and the nature of that interest.

2. Councillor Stokes

- ✧ In all matters, a member must consider whether or not he/she has a personal interest whether that interest must be disclosed. [10. (1)]
- ✧ He will have an interest if it relates to, or is likely to affect a private club, society or association operating within the authority's area in which he has membership or holds a position of general control or management [10 (2) (a) (ix)]
- ✧ Further information is required as to the exact nature of the councillor's relationship with the Club. What if he were a member of the managing committee of the Club?

Is it a prejudicial interest?

- ✧ Is there an exemption under the Code? [paragraph 12(2) & (3)]
- ✧ Would it be reasonable for a member of the public with knowledge of the relevant facts to regard the interest as being so significant that it is likely to prejudice the member's judgement of the public interest? [12(1)]

What should he do?

- ✧ If it is a personal interest only, that interest must be disclosed at any meeting where the matter is discussed, and in any letter, e-mail, etc. to a member or an officer of the authority. [para 11]
- ✧ If it is a prejudicial interest, then the member must (unless he has obtained a dispensation from the Standards Committee):
 - not to seek to influence decision about that business;
 - not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business. [14(1) (c) & (d)]

"...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."

- Is there anybody else who can discuss the matter with the Council on behalf of the club?
- The interest (i.e. the involvement with the youth club) should be registered on the Council's Register of Interests.

3. Councillor Jones.

(a) The Member should consider whether he/she has a personal and prejudicial interest in the Planning Application. The Member will have a personal interest under 10 (2) (c) (i) if her wellbeing or financial position, or that of a person with whom she lives, or any person with whom she has a close personal association is affected by the decision.

It is not clear on the facts given of the nature of the relationship between the Member and the senior manager. The Public Services Ombudsman for Wales has issued guidance to help clarify this definition:

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

(b) She has a personal interest by virtue of a fact that the governing body of the school is a body to which she has been elected, appointed or nominated by her authority[10(2)(a)(viii)]

Such a body is also one of the exemptions under the Code which will usually means that it is not a prejudicial interest. [12(2) (a) (iii)]

However, because the matter under consideration relates to the determination of an approval, consent, licence, permission or registration, this exemption does not apply. The usual test must therefore be considered to decide whether or not the interest is a prejudicial one. [10(3)]

Member Induction Wales 2017



Ethics and Standards

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Ethical Governance

Effective local government requires high standards of conduct to ensure that there is public confidence in everything we do.



Consequences for Councillors...

- “The committee found that [the] councillor had breached the code of conduct and that he should be suspended for a calendar month”
- “[The Councillor] had failed to show respect and consideration for others... the Committee agreed that they would publish the Committee’s findings ...and recommend to Council that the Member be issued with a formal censure”
- “Councillor breaches code of conduct for threatening behaviour...towards employee”

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Exercise

Questionnaire



Your Responsibilities

You have a legal duty to act ethically. This is set out in the Local Government Act 2000.

The Local Authorities (Model Code of Conduct) (Wales) Order 2008 requires a mandatory code of conduct in each authority based on a national model

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The Ethical Framework

The Nolan Committee in 1997 - origins of the ethical framework for Standards in Public Life

As a Member you must have regard to these principles :

Selflessness

Honesty

Integrity and Propriety

Duty to uphold the law

Stewardship

Objectivity in Decision making

Equality and respect

Openness

Accountability

Leadership



Code of Conduct

- Shows you how to apply the ethical framework
- Unless you sign your Declaration of Acceptance and give a written undertaking to observe the Code of Conduct you cannot be a member
- If you fail to undertake or observe you can be suspended from office
- Applies to all members in Wales apart from members of Police Authorities who should comply with the English Code of Conduct

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The Code Applies to You Whenever You Are ...

- In any “official” meeting of the authority
- In any meeting where members or officers of the authority are present
- Acting, claiming to act or giving the impression you are acting as a representative of the authority
- Conducting business of the authority as a member and acting as a representative of the authority
- Acting in an official capacity
- Acting as a representative on another body unless that body has conflicting legal rules or its own code.



And Also...

At any time if :

- You conduct yourself in a manner likely to bring your office or authority into disrepute or
- You use or attempt to use your position to gain advantage or avoid disadvantage for yourself or others or
- You misuse your authority's resources

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General Rules you Need to Follow Under the Code

- Promote equality
- Treat others with respect and consideration
- Do not bully or harass people
- Do not compromise the impartiality of officers
- Do not disclose confidential information
- Do not prevent access to information



General Rules you Need to Follow Under the Code

- Do not bring your office or authority into disrepute
- You must report breaches of the code to your Monitoring Officer
- Do not make vexatious complaints
- You must cooperate with investigations
- You must not use your position improperly
- Do not misuse your authority's resources

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General Rules you Need to Follow Under the Code

- Reach decisions objectively
- Consider advice that officers give you and give reasons if you don't take it
- Comply with the law and your authority's rules regarding expenses
- Do not accept any gifts or hospitality that would place you under an obligation or seem to do so.



Interests

The public must have confidence that you are making decisions in their best interests not yours!

Therefore, if you have an interest you must declare it.

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Personal Interests

You have a personal interest when a decision relates to or is likely to affect you or a “close personal associate” in relation to

- Your job or business
- Your employer or company in which you are a partner or director
- Someone who has contributed to your election costs or member expenses
- Any company where you have shares over £25K or more than 1% of the total share value which has premises or land in your area



- Any contract that your authority makes with a company in which you are a partner, paid director or hold shares
- Any land in which you have an interest in your authority's area
- Any land let by your authority to a firm in which you are a partner, paid director or hold shares
- Any land in your authority's area which you have a license to occupy for at least 28 days

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- Any body to which you have been elected appointed or nominated by your authority
- Any public authority or body exercising functions of a public nature, charity, public opinion or policy, trade union or professional association, private club or society in your authority's area of which you are a member or in a management position



Who is ' a Close Personal Associate'

Not just your best friend but your worst enemy....

- Close friends
- Colleagues with whom you have strong connections
- Business associates
- Close relatives
- Or someone with whom you have been in dispute

- But not casual acquaintances, distant relatives or people who you come into contact with through your work.

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What Do You Do If You Have a Personal Interest ?

- You must declare it verbally at meetings
- You must declare it when making written or verbal representations outside of a meeting
- You must complete a declaration of interests form
- BUT you are entitled to take part in discussions and vote unless it is a prejudicial interest



Prejudicial Interests

Are personal interests which a member of the public would regard as likely to influence your opinion or your ability to be objective for example:

- If your daughter lives next to a proposed site for a new housing development
- If your son attends a local school which is due for closure

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What Do You Do if You Have a Prejudicial Interest?

You must leave the meeting during the discussion

You must not exercise delegated powers

You must not seek to influence the decision

You must not make written or verbal representations

UNLESS

The Standards Committee has granted you a dispensation

The public have a right to speak in which case you have the same right to speak (but you must leave after you have spoken) or you can provide written representations to the meeting

You have been called before a scrutiny committee

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Interests Exercise

In groups consider the scenarios and answer the questions.

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Predisposition and Predetermination

Predisposition – having an opinion on something but you have not yet made up your mind

Predetermination – having decided a position on something where no argument will change your mind

If you are involved in a decision you should avoid giving the impression that you have conclusively decided how you will vote at the meeting.

“I have a view on the subject but want to listen to all the arguments before I make up my mind”



Bias

- Bias – Members need to remember that apparent bias can infect the whole decision and make it vulnerable to challenge as is highlighted by a recent case in the High court:- *Kelton v Wiltshire*
- Planning permission for a residential development was quashed due to the apparent bias of a member of the planning committee

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How the Code is Policed

- The Monitoring Officer
- The Standards Committee
- The Public Services Ombudsman for Wales
- The Adjudication panel for Wales



What Happens if you Breach the Code?

- Complaints are made to the Ombudsman
- If he believes them to be justified he refers them to the authority's standard's committee or to a tribunal convened by the Adjudication Panel for Wales
- If they find the complaint proven they can impose a range of sanctions from no action through suspension to disqualification for 5 years
- Even if you are suspended you are still subject to the Code!
- Remember also any local resolution procedures

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Where to Find Further Information

- If in doubt ask the Monitoring Officer
- Guidance from the Public Service Ombudsman for Wales <http://www.ombudsman-wales.org.uk/>

STANDARDS COMMITTEE

17th MARCH 2017

Code of Conduct training for Town and Community Councillors

Recommendations / key decisions required:

- That the Committee considers the training presentation and agrees dates for the proposed sessions.

Reasons:

- The subject matter of this report falls within the remit of the Committee.

Scrutiny Committee recommendations / comments:	NOT APPLICABLE
Executive Board decision required:	NO
Council Decision required:	NO

Executive Board Member Portfolio Holder: Cllr. Emlyn Dole (Leader)

Directorate: Chief Executive's Name of Head of Service: Linda Rees Jones Report Author: Robert Edgecombe	Designations: Head of Administration & Law Acting Legal Services Manager	Tel Nos. / E-Mail Addresses: 01267 224010 lrjones@carmarthenshire.gov.uk 01267 224018 rjedgeco@carmarthenshire.gov.uk
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EXECUTIVE SUMMARY

STANDARDS COMMITTEE

17th MARCH 2017

Code of Conduct training for Town and Community Councillors

For several years the Standards Committee has arranged training sessions on the Members Code of Conduct for Town and Community Councillors. These have been held in County Hall in June, and the 2016 sessions were well received with approximately 100 delegates in attendance over two evenings.

Preparations are now being made to repeat these sessions in 2017 and a revised presentation is attached which seeks to incorporate feedback from last year's events and reflect that following the local government elections in May 2017 there is likely to be an increase in the number of Town and Community Councillors without any previous knowledge of the Code of Conduct.

The main change is the re-writing of the section on Personal Interests. Although the reference to the 'easy use' guide is retained, the slides setting out the various grounds that give rise to a personal interest have been re-inserted to better explain to new councillors their obligations under this part of the Code. In addition;

1. A new section has been inserted setting out those personal interests which the Code provides are NOT prejudicial.
2. A new section has been inserted setting out where to get advice and emphasising the role of the Clerk.

Once the presentation has been finalised it will be send for translation.

As regards the venue and dates for these training sessions, the Committee needs to decide whether to repeat last year's arrangements (two evening sessions in County Hall), increase the number of sessions and/or host them at a variety of locations outside of County Hall.

The committee will also need to decide whether to place a limit upon the number of delegates that attend from each council and/or give priority particular groups such as newly elected councillors or council clerks.

DETAILED REPORT ATTACHED?

NO – however, revised presentation attached

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: Linda Rees Jones Head of Administration & Law

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

CONSULTATIONS

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

Signed: Linda Rees Jones Head of Administration & Law

1. Scrutiny Committee – N/A
2. Local Member(s) – N/A
3. Community / Town Council – N/A
4. Relevant Partners – N/A
5. Staff Side Representatives and other Organisations – N/A

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

THESE ARE DETAILED BELOW:

Title of Document	File Ref No. / Locations that the papers are available for public inspection
Legal file	DPSC-148 / Legal Services, County Hall

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COUNCILLORS CODE OF CONDUCT



PROGRAMME

Introduction

When the Code Applies

General Duties

Personal Interests

Prejudicial Interests

Exempt Interests

Dispensations

Enforcement

Predetermination

Where to seek advice

Conclusion

Questions

INTRODUCTION

Based upon the Nolan Principles for conduct in public life

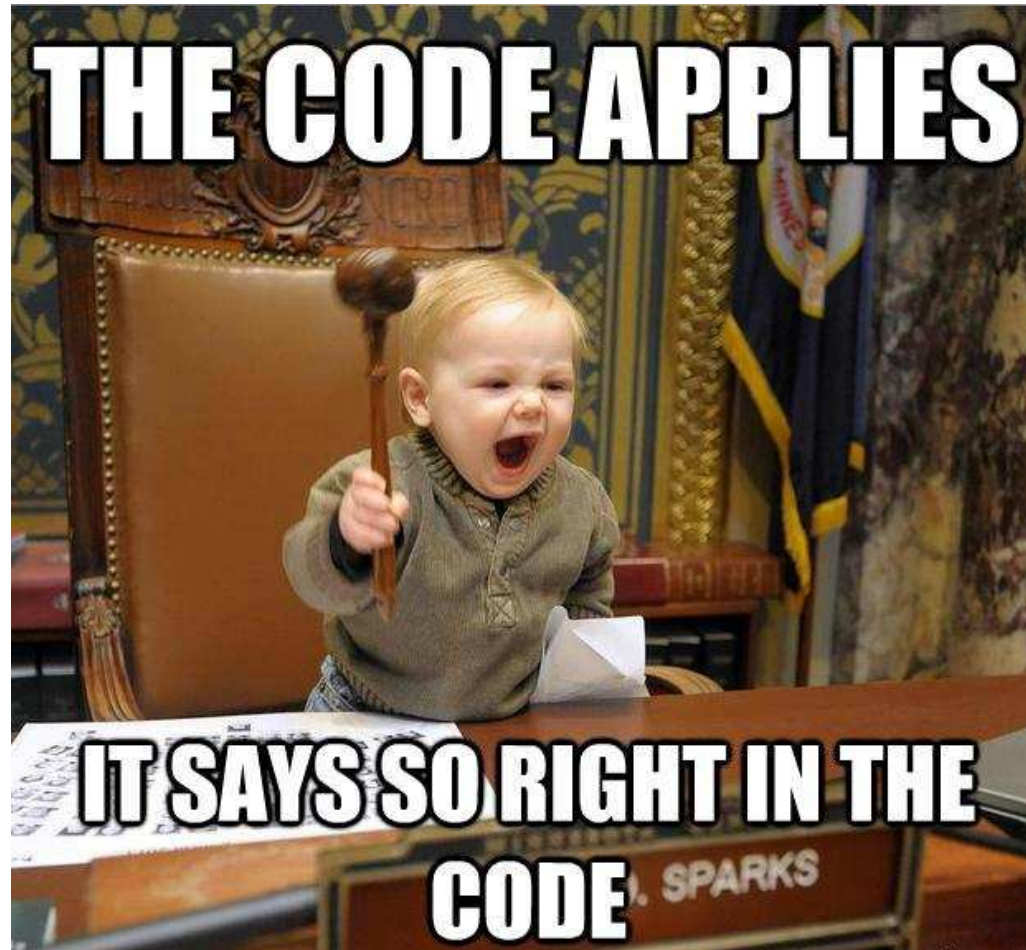
Establishes an ethical framework for

Councillors to work to

The Code shows how to apply the framework in practice

Each Council must adopt its own code based on the WAG model.

WHEN THE CODE APPLIES



WHEN THE CODE APPLIES

**In any official council
meeting**

**In any meeting with
members or officers**

**When acting as a Council
rep or appearing to do so**

**If conducting Council
business**

**If acting in any other
official role**

**If a Council rep on another
body**

AND

WHEN THE CODE APPLIES

AT ANY TIME IF:

Your conduct is likely to bring your office or the Council into disrepute

You use your position to gain an advantage for yourself or another

You misuse Council resources

WHEN THE CODE APPLIES – TEST YOURSELF

DOES THE CODE APPLY:

- **At Council meeting**
- **In the local pub**
- **When giving interviews**
- **When dealing with ward business**
- **When representing the Council at a school governors meeting**
- **When using social media**
- **When on holiday abroad**
- **In the privacy of your own home.**

GENERAL DUTIES



GENERAL DUTIES – YOU MUST

- **Promote Equality**
- **Show respect & consideration to others**
- **Not harass or bully others**
- **Not compromise your officers impartiality**
- **Not disclose confidential information**
- **Not prevent access to information**
- **Not bring your office or council into disrepute**

GENERAL DUTIES – YOU MUST

- **Report code breaches**
- **Not make vexatious complaints**
- **Cooperate with investigations**
- **Not use your position improperly**
- **Not misuse Council resources**
- **Reach decisions objectively**
- **Consider advice and give reasons for not following it**

GENERAL DUTIES – YOU MUST

- **Comply with rules on expenses**
- **Not accept gifts or hospitality that obligates you or appear to do so**

GENERAL DUTIES – TEST YOURSELF

Which of these is not a duty under the code;

- 1. Promote equality**
- 2. Attend meetings**
- 3. Report code breaches**
- 4. Not to bully or harass**
- 5. Not misuse use position**
- 6. Consult constituents**
- 7. Follow officer advice**
- 8. Not misuse resources**
- 9. Show respect to others**
- 10. Apologise for mistakes**

PERSONAL INTERESTS

“The public must have confidence that Councillors are acting in the public’s best interests, not their own, or those of their family and friends.”

(Public Services Ombudsman for Wales)

PERSONAL INTERESTS

- The Code lists a number of situations where a personal interest arises.
- If you have a personal interest in any council business you must declare that interest
- If that interest is also prejudicial you cannot participate or vote.

WHAT IS A PERSONAL INTEREST?

Where a matter **relates to or is likely to affect;**

1. Your employment of business
2. Your employer or a business in which you are a partner or director
3. Anyone (other than your council) who contributes to your election or members expenses

Or....

WHAT IS A PERSONAL INTEREST?

Contd..

4. A company with a place of business/land in your area in which you hold 1% of shares (or shares worth more than £25k)

5. A contract for goods/services/works between your council and a business in which you are a director or a shareholder

Or.....

WHAT IS A PERSONAL INTEREST?

Contd...

6. Land that you own (include part own) in the area

7. Land where your Council is the landlord and you or your business is a tenant (includes where you are a director or shareholder)

8. Any land in the area where you hold an occupational licence.

Or....

WHAT IS A PERSONAL INTEREST?

Contd...

9. Where you are a member of or have a management role in the following types of organisation;

- (a) Public authority/body exercising public functions**
- (b) Company, society or charity**
- (c) Body which exists to influence public opinion**

Or....

WHAT IS A PERSONAL INTEREST ?

9. Contd...

(d)Trade union of professional association

(e)Private club, society or association operating in the area

Or.....

WHAT IS A PERSONAL INTEREST?

Where the matter **might reasonably be regarded as affecting**;

1. Your well-being or financial position
2. The well-being or financial position of a person you live with
3. The well-being or financial position of a **close personal associate**

Or...

WHAT IS A PERSONAL INTEREST?

Contd...

4. Any employment or business carried on by you, a person living with you, or a close personal associate of yours.

5. Any person who employs a person living with you or a close personal associate or any business in which they are a partner or director.

Or....

WHAT IS A PERSONAL INTEREST?

Contd...

6. Any public authority, company, society, charity, trade union, professional association, private club, or association in which a person living with you/close personal associate is a member or has a position of control or management.

Or....

WHAT IS A PERSONAL INTEREST?

Contd...

7. Any company in which a person living with you/close personal associate owns shares worth more than £5,000.

IF YOU HAVE A PERSONAL INTEREST THEN YOU MUST DECLARE IT.

PREJUDICIAL INTERESTS

If you have a Personal interest you **MUST check whether that interest is also prejudicial.**

REMEMBER

The test is not whether you think the interest influences you, but whether you think a hypothetical member of the public would think it does.

PREJUDICIAL INTERESTS

If you have a Prejudicial interest you MUST;

1. Disclose that interest
2. Not try to influence any decision
3. Withdraw from the meeting whilst that business is dealt with

EASY USE GUIDE

- Developed by the Standards Committee to help you apply the code in relation to personal & prejudicial interests
- Three steps to determine what interest (if any) you have and what you should do.

CASE STUDY ONE

- **Cllr X has a grandchild who attends the village school which is threatened with closure. The matter is on the agenda at the next Governors meeting which the Cllr attends as a Council representative**
- **Does Cllr X have a personal interest?**
- **If he does, is it also prejudicial?**
- **What should Cllr X do?**

CASE STUDY TWO

- **Your Council has been consulted on a planning application by a community group on which Cllr X sits as a council representative**
- **Does Cllr X have a personal interest?**
- **If yes, is it also prejudicial?**
- **What should Cllr X do?**

CASE STUDY THREE

- **Your council receives an application from a community group for a £550 grant. Cllr X is a member of that group.**
- **Is there a personal interest?**
- **If yes, is it also prejudicial?**
- **What should Cllr X do?**

EXEMPTED INTERESTS

The Code lists certain personal interests which are NOT prejudicial, namely;

- 1. Where the business relates to another authority of which you are a member**
- 2. Where the business relates to another public authority in which you have a position of control or management**

Or....

EXEMPTED INTERESTS

Contd..

3. Where the business relates to a body to which you have been appointed by your Council

4. Your role as a school governor where NOT appointed by your Council) UNLESS the business specifically relates to that school

Or.....

EXEMPTED INTERESTS

Contd...

5. Your role on the LHB when NOT appointed by your Council

6. In relation to a grant/loan etc by your Council to a community or voluntary organisation up to a maximum of £500.

DISPENSATIONS



DISPENSATIONS

- **A Cllr with a prejudicial interest may apply to the Standards Committee for permission to be involved in a matter**
- **Applications must be submitted in sufficient time for a meeting to be called in accordance with rules on publishing agendas etc.**

DISPENSATIONS

- **Applications must be submitted on a standard form**
- **They may be submitted by a clerk on behalf of 1 or more cllrs.**
- **They must be based on one or more of the following grounds;**

DISPENSATIONS

- **At least 1/2 of fellow cllrs share the same interest**
- **The nature of the interest is such that it would not damage public confidence**
- **The Cllr has a particular expertise which justifies their contd. involvement**
- **The interest is common to a significant proportion of the public**

DISPENSATIONS

- **The matter relates to a vol. organisation & the Cllr is involved in its management & has no other interest in the matter (*can only speak , not vote under this option*)**
- **Otherwise appropriate in all the circumstances**
- **(*There are other grounds available but they do not apply to Community Cllrs*)**

DISPENSATIONS

The grounds for seeking a dispensation, plus additional guidance are attached to the application form.

Try to give as much information as possible as to the nature of your interest and why the ground(s) for dispensation apply

DISPENSATIONS

- **In 2013-2014 the Standards Committee granted 97.3% of dispensations sought.**
- **Dispensations are usually granted for a set period of time (often up to 6 months)**
- **The majority of dispensations are to speak only and relate to a cllrs involvement in a voluntary organisation.**

ENFORCEMENT



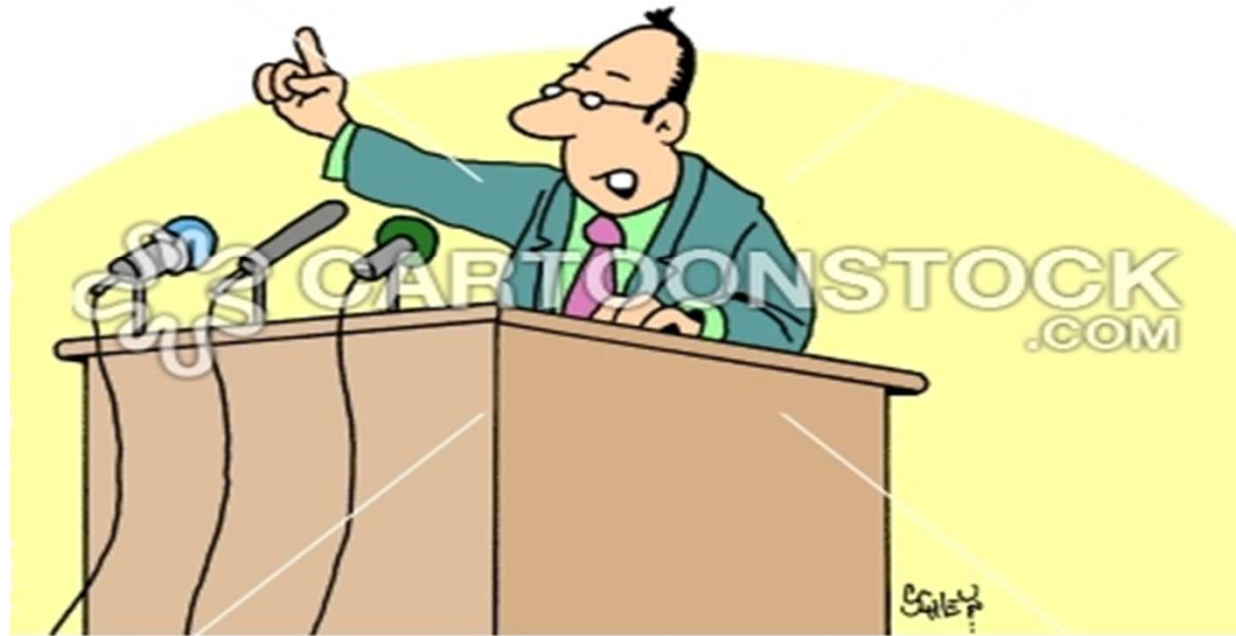
ENFORCEMENT

- **All complaints regarding breaches of the code should be referred to the PSOW who will decide whether or not to investigate.**
- **If the PSOW decides the case merits investigation, he may do so himself or refer the case to the local Monitoring Officer to do so**

ENFORCEMENT

- **If an investigation finds evidence of a breach it may be referred to the local Standards Committee or the Adjudication Panel for Wales for determination.**
- **The Standards Committee can suspend a Cllr from office**
- **The Adjudication Panel can disqualify a Cllr from office**
- **Both can impose lesser sanctions**

PREDETERMINATION



"I ALWAYS STOOD BY MY STRONG CONVICTIONS BUT SERIOUS ARGUMENTS MADE IT NECESSARY TO CHANGE MY MIND:

PREDETERMINATION

- **Technically not part of the Code, but ties in with the requirement to act objectively.**
- **Arises where someone makes their decision in advance.**
- **c/f 'Predisposition' – where someone forms a view in advance, but does not come to a decision until the end of the debate.**

PREDETERMINATION

- **Avoid giving the impression that you have predetermined an issue. Instead :**
- ***‘I have a view on the issue, but want to listen to all the arguments before I make up my mind.’***
- **Predetermination can result in a decision being unlawful, as well as risking a Cllr being in breach of the Code**

PREDETERMINATION – TEST YOURSELF

- **Cllr X was elected on a platform of opposing further housing development in his village. Does this mean he has predetermined any such planning application?**
- **What if he is on record as saying ‘If elected I will always vote against any such planning application’**
- **What if he said he would ‘argue against’ applications.**

WHERE TO SEEK ADVICE

Clerks

May seek advice from the Monitoring Officer in relation to the Code

Councillors

Ombudsman's guidance makes it clear that Councillors should seek advice from their Clerks on Code issues and only approach the Monitoring Officer if the clerk is unavailable

CONCLUSION

- **Take time to familiarise yourself with the code**
- **Always have it with you when conducting council business**
- **Make use of dispensations to fulfil your democratic role**
- **If unsure – SEEK ADVICE**

QUESTIONS



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STANDARDS COMMITTEE

17th MARCH 2017

Standards Committee Forward Work Programme

Recommendations / key decisions required:

- That the Committee considers the work programme.

Reasons:

- The subject matter of this report falls within the remit of the Committee.

Scrutiny Committee recommendations / comments:	NOT APPLICABLE
Executive Board decision required:	NO
Council Decision required:	NO

Executive Board Member Portfolio Holder: Cllr. Emlyn Dole (Leader)

Directorate: Chief Executive's Name of Head of Service: Linda Rees Jones Report Author: Robert Edgecombe	Designations: Head of Administration & Law Acting Legal Services Manager	Tel Nos. / E-Mail Addresses: 01267 224010 lrjones@carmarthenshire.gov.uk 01267 224018 rjedgeco@carmarthenshire.gov.uk
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EXECUTIVE SUMMARY

STANDARDS COMMITTEE

17th MARCH 2017

Standards Committee Forward Work Programme

At a previous meeting of the committee it was requested that officers prepare a draft forward work programme for the 2017/2018 municipal year, with a view to distributing the routine business of the committee more evenly throughout the year.

Attached is a draft programme which seeks to facilitate this request.

In order to achieve a more even distribution of work throughout the year it is proposed to move the presentation of the Chairman's Annual Report to full council from December 2017 to January 2018.

This will allow the draft Annual Report to be considered by the committee at its meeting in December 2017 (rather than the usual September) along with the annual report on Code compliance by Town and Community Councils. This change will have the added benefit of allowing those councils additional time to provide the information to be included in the latter report.

The presentation of the other reports contained within the programme is largely dictated by the dates upon which the information contained within the reports will become available.

In addition to the above, provision is made for a standing item on the agenda of all meetings for any developments in case law or guidance to be brought to the attention of the committee. This could include, for example, the most recent Code of Conduct Casebook published by the Public services Ombudsman for Wales

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: Linda Rees Jones Head of Administration & Law

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

CONSULTATIONS

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

Signed: Linda Rees Jones Head of Administration & Law

1. Scrutiny Committee – N/A
2. Local Member(s) – N/A
3. Community / Town Council – N/A
4. Relevant Partners – N/A
5. Staff Side Representatives and other Organisations – N/A

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JUNE 2017	SEPTEMBER 2017	DECEMBER 2017	MARCH 2018
Complaints & Compliments Annual Report	Ombudsman's Annual Report	Code of Conduct Compliance by Town & Community Councils	Forward Work Programme for 2018/2019
Review of Whistleblowing Policy	Feedback on Code training for Town & Community Councillors	Chairman's Annual report to Full Council	Preparation for Code training for Town & Community Councillors
Code of Conduct update	Code of Conduct update	Code of Conduct update	Code of Conduct update
	Feedback on Code Training for County Councillors		

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