

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

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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)]