

Charitable Trustees and declarations of interest under the Code

Introduction

This guide is aimed at councillors who are trustees of charitable organisations. It explains the different types of charities that you may be involved in. It also aims to provide you with a better understanding of your role so that you know when to register and declare your interest under the Code of Conduct.

Any mention of a charitable organisation in this guide refers to a registered charity or an unregistered body which is directed to charitable purposes.

Understanding your charity

There are two main types of charities, incorporated charities and unincorporated charities.

An **incorporated charity** is a corporate body which has a legal existence that is separate from the individual persons that form it.

Most incorporated charities are limited companies registered with Companies House and the Charities Commission.

An **unincorporated charity** may be a 'trust' or 'association'.

An unincorporated charity cannot itself 'hold' the legal title to land or other forms of investment because it has no separate legal status. For this reason, its land or investments will be held on its behalf by:

- individuals or an incorporated body known as a custodian trustee
- a holding trustee or
- a nominee.

Appointment

A charity's governing document sets out your charity's purposes and how it is to be administered. It will also, usually, set out how trustees are to be appointed which can vary according to the individual charity.

The governing document may be:

- a trust deed
- a constitution
- memorandum and articles of association or
- another document.

A trustee can be appointed directly by a charitable organisation or nominated by their local authority. He or she may be appointed to manage the charity or to only hold the title to the charity's land or investments. It is important to understand your role as a trustee in order to understand if you have an interest to register.

Charity trustees

Charity trustees serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members, or they may be referred to by some other title. For example, some charity trustees are known as 'officers' and have special responsibilities such as chair, treasurer or ex-officio trustee. An 'ex-officio trustee' is a type of charity trustee who is in that position because of their office, such as the mayor of a town or the head teacher of a school.

Whatever their title the principles and main duties of a charity trustee are the same. Charity trustees have and must accept ultimate responsibility for directing the affairs of a charity. They must ensure that it is solvent, well-run, and delivers the charitable outcomes for which it has been set up, for the benefit of the public. To act outside of their powers is a breach of trust.

Nominated trustee

Sometimes an individual is nominated by an organisation to be a charity trustee. For instance, a local authority may nominate its councillors onto the governing body of a charity that operates in its area and for which it has provided funding. Despite being appointed in a different way, nominated trustees (sometimes known as representative) have the same legal duties and responsibilities as any other charity trustee.

Other types of Trustee

There are three types of trustees who only hold the charity's land or investment; a custodian trustee, a holding trustee and a nominee.

A **custodian trustee** is a corporation, such as the treasury solicitor, limited companies, health authorities, local authorities or other types of organisations, whose main function is to hold the legal title to all investments and property on behalf of the charity. Note that an individual can never be one.

A **holding trustee** and a **nominee** can either be an **individual** or a **corporation**. They too hold the legal title to a charity's property or investments on behalf of the charity.

Corporate trustees

A corporate trustee is a corporation such as a local authority which has itself been appointed to act as a trustee of a charity. It may be appointed as a charity trustee or custodian trustee (holding trustee or a nominee) or both.

A local authority may act as the custodian trustee only if the charity is for the benefit of the people living in the whole or part of its area, and not an ecclesiastical charity or a local charity for the relief of poverty. For example, parish councils are often appointed custodian trustees of charitable village halls, recreation grounds and youth clubs.

If the corporation is appointed as a charity trustee it may be a "trustee for all purposes" acting on its own (a

sole trustee) or one of a number on a body of charity trustees (a joint trustee). A corporation does not itself need to be charitable to be a trustee of the charity.

Many local authorities act as sole trustees of local charities – especially charities for recreational or educational purposes. This means the local authority as a corporate body both holds the property and oversees its application as a charity trustee.

If a local authority is itself the charity trustee, it decides within the scope of local government law, what structures should be used to reach decisions in its name as a charity trustee. For example, it may decide all the decisions are to be reached by the council or it may decide to delegate the decisions to a separate management committee. Whatever the structure employed, the individual councillors concerned are not themselves charity trustees and are not required to register their role in relation to the charity in their register of interests. When making charity decisions at the council or management committee meetings, they must only act in the best interests of the charity and independently of their local authority interests.

What personal interests should I register?

The Code of Conduct says you have a personal interest in any business of your authority where it relates to or is likely to affect an interest that you must register.

You must register your membership or position of control or management in:

- any body to which you are appointed or nominated by your authority
- any body directed to charitable purposes

If you are a charity trustee, you must always register your interest in the charity whether you are appointed directly by the charity or nominated by your local authority. This is because you are a member and in a position of management over the charity.

An example of this would be paying the charity's employees or making decisions on the organisation direction.

Are there circumstances when I do not have to register a personal interest?

Yes there are. A holding trustee or nominee who only holds the charity's land or investment will not have a personal interest and will not need to register an interest. This is because he or she will not be a member of the charity nor in a position of general control or management. This type of trustee can only act on the lawful instructions of the charity trustees and in accordance with any provisions contained in the governing document.

Please note: Holding the legal title to a charity's property is usually all that holding trustees do. However, occasionally a charity's governing document may confer additional powers and responsibilities on a holding trustee. If you are a holding trustee who has any decision-making powers in the way the affairs of the charity are managed – either solely or together with other trustees you will be acting as a charity trustee and must register your interest as explained above.

If you do not have any of these decision-making powers, then you will not need to register your interest as an individual holding trustee.

Personal interests that affect your well-being or financial position

It is important to remember that even when your role does not give rise to an interest that needs to be registered it may still be a personal interest that you need to declare. This is because a decision in relation to the business of your authority which relates or affects the charity might reasonably be regarded as affecting your well-being or financial position more than it would affect the majority of inhabitants of the ward or electoral division or authority's area affected by the decision.

For example, you might have a personal interest if you are on a local authority's management committee, a trustee of a non-charitable trust, or a holding trustee or nominee.

Case Example


Haven Parish Council ("council") is the custodian trustee of Haven Village Hall. Councillor Jones is a parish council member and has been appointed by the Council to the governing body of the Village Hall Trust ("Charity Trustee"). The village hall is in need of repairs and the Charity Trustee applies for a council grant for the repairs. The council meets to consider the surveyors report and agree the funding. Does Councillor Jones need to declare any interest at the meeting?

- As a custodian trustee the council holds the legal title to the Haven Village Hall. The council will be able to act as a custodian trustee if the charity is for the benefit of the people living in the whole or part of its area. However the council can only act on the lawful instructions of the charity trustees of the Village Hall Trust. The council itself is not a charity trustee.
- Councillor Jones has been nominated on to the governing body of the Village Hall Trust by the council. Whether appointed directly by the trust or nominated by the council, Councillor Jones is a charity trustee. He must register this interest because he is a member and in a position of general control or management of a body to which he has been nominated by the council and also as it is a body which is directed to charitable purposes.
- When the matter relating to the grant application comes before the council, Councillor Jones will have a personal interest which he has registered and he must declare this interest at the meeting.
- As the matter affects the financial position of the trust, Councillor Jones may also need to declare a prejudicial interest and withdraw from the room if in his view an objective person would consider his interest as so significant that it is likely to prejudice his judgment of the public interest.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 4th January 2010.

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The role and appointment of parish and town council representatives to the standards committee and the Standards Committee (England) Regulations 2008 (the 2008 Regulations)

Paragraph 4(2) of the 2008 Regulations states that, 'where an authority is a responsible authority, it must ensure that at least two members of the standards committee are members of parish councils for which it is responsible, who are not also members of the responsible authority.'

Paragraph 7(4) of the 2008 Regulations states that, 'where a meeting of a standards committee, or sub-committee of a standards committee, is convened to discharge any function specified... relating to a member or former member of a parish council, no decision may be taken unless at least one member of a parish council for which the authority is the responsible authority, is present when such matters are being considered.'

The role of parish representatives

Parish representatives can be involved in any case being considered by the standards committee. However, the 2008 Regulations make it a requirement that any sub-committee or standards committee meeting that makes any decision on a case concerning a parish councillor has to have a parish representative.

Having a parish representative on cases about parish or town councillors ensures that the standards committee has a member with experience and understanding of local councils. They also bring with them knowledge about local issues which is helpful when assessing parish cases.

The best structure for a responsible authority's standards committee

Although the legislation states that a standards committee of a responsible authority must have at least two members that are parish councillors, Standards for England recommends they have three and that at least two are from different parish councils.

Why is it important to have three parish representatives?

Having three parish representatives on the standards committee of an authority will ensure that cases concerning parishes can be considered and dealt with in a timely manner. It ensures there are sufficient parish representatives to hear a case at all stages; even in the instance where one of the representatives is conflicted out, sick, on leave or otherwise unavailable.

In cases where a standards committee only has one parish representative who is conflicted out of dealing with a case, the authority will have to appoint a new parish representative before continuing with the case. The 2008 Regulations do not make it possible to borrow a parish representative in the way they do independent members.

Appointment of parish representative

Your authority must decide how to recruit and appoint parish or town council representatives. Your parish and town council representative should have the trust of town and parish councils in your area, so you should involve them in the selection procedure.

If you are finding it difficult to find a parish or town council representative, your local county association of local councils may be able to help you. For example, the county association may be able to give you a list of possible candidates. They may also be prepared to conduct an election process for you.


This process should receive the support of the parish and town councils in the area and show that you want to appoint standards committee members in a fair and open way.

Note: Not every parish or town council in a district area has to have an appointed standards committee member.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 4th January 2010.

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Personal and prejudicial interests

Personal and prejudicial interests are covered by paragraphs 8-13 of the Code of Conduct.

What is a personal interest?

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

- 1) An interest that you must register.
- 2) An interest that is not on your register but where the well-being or financial position of you, members of your family, or people or bodies with whom you have a close association, is likely to be affected by the business of your authority more than it would affect the majority of:
 - inhabitants of the ward or electoral divisions affected by the decision (in the case of authorities with wards or electoral divisions)
 - inhabitants of the assembly constituency affected by the decision (in the case of the Greater London Authority)
 - inhabitants of the authority's area (in all other cases).

What should I do if I have a personal interest?

You must declare that you have a personal interest and the nature of the interest as soon as it becomes apparent to you in all formal meetings before the matter is discussed.

However, where an interest arises solely from membership of, position of control or management on:

- any other body to which you were appointed or nominated by the authority
- any other body exercising functions of a public nature, for example if you have been appointed as a school governor
- you will only need to declare your interest if and when you speak on a matter, provided that you do not have a prejudicial interest.

What is a prejudicial interest?

Your personal interest will also be a prejudicial interest if it meets all of the following conditions:

- a) The matter does not fall within one of the exempt categories of decisions under paragraph 10(2) (c), for example setting the council tax.
- b) The matter affects your interests financially or is about a licensing, planning or other regulatory matter that might affect your interests.
- c) A member of the public, who knows the relevant facts, would reasonably think your personal interest so

significant that it is likely to prejudice your judgement of the public interest.

What should I do if I have a prejudicial interest?

You must declare that you have a prejudicial interest and the nature of that interest as soon as that interest becomes apparent.

You should leave the room unless members of the public are allowed to make representations, give evidence or answer questions about the matter. If this is the case, you can also attend the meeting for that purpose.

You must leave the room immediately once you have finished speaking, or when the meeting decides that you have finished (if that is earlier).


If your authority does not provide members of the public with any right to speak, you would need to leave the meeting room after declaring the nature and extent of your interest. However, you can:

- Make written representations in your private capacity. These should be addressed to officers rather than members of the authority.
- Use a professional representative to make an application, for example a planning application, on your behalf.
- Arrange for another member of the authority to represent the views of your constituents.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 27 October 2009.

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Notifications to parish and town councils concerning complaints about their members and the Standards Committee (England) Regulations 2008 (the 2008 Regulations)

The 2008 Regulations make it clear that parish and town councils must be given notification that a complaint concerning one of their members has been assessed. After that, unless the initial assessment sub-committee decides to take no action on the complaint, the parish or town council must then be informed of certain significant subsequent steps taken in dealing with that complaint.

What information should be received?

Where a sub-committee of a standards committee meets to assess an allegation or to review a decision it must send in writing to the parish or town council concerned the main points considered, its conclusions, the reasons for its decision and may name the member unless to do so is not in the public interest or would prejudice an investigation. The decisions are whether to investigate the allegation, or whether to take some other action in relation to the alleged behaviour.

A parish or town council should also receive notification after a standards committee meets to consider the report into an investigation and whether to accept a finding about whether a councillor has breached the code of conduct or not. They should also receive notification of the outcome of a hearing and reasons for it, if one is held.

When should notifications be sent?

The duty to give notifications has no specific time frame. The general rule is that notification should be given as soon as is reasonably practicable. However, Standards for England recommend that notification be sent out within five working days of the decision being made for most decisions and within two weeks of any hearing being concluded.

The purpose of notifications

As a parish or town council you will be given these notifications to inform you of a case against one of your members and to keep you informed of significant events as the case progresses. This is important so that you have time to prepare or preserve evidence relevant to the complaint. You will also be able to make appropriate arrangements between the member and an employee where the complaint has been made by the employee. The rationale of the notification is to facilitate the standards committee's action, not to start new action within the parish or town council.

What to do when you get a notification

Each council needs to consider what it can lawfully do with the notifications it receives. Parish or town councils should consider putting in place protocols that deal with:

- access to information
- sharing of information
- how various legal obligations are met including those under the general law of confidentiality, the Freedom of Information Act and the Data Protection Act.

Notification procedures

Standards for England recommend that each parish or town council adopt procedures about how to deal with notifications. The clerk should then notify the monitoring officer of these procedures once they have been implemented so that the monitoring officer knows who to send the notifications to. The rules should clearly set out the limits on what information each member, employee and the public are able to receive about each complaint.

They should:

- Ensure that if the council is to be informed of a notification it is normally done by sending out an information item for members, rather than including the notification on the agenda of a council meeting.
- Choose a nominated employee (usually the clerk) and select a council committee to deal with and be informed of such notifications when they are received.
- The nominated employee and the committee should, if required to discuss the notification at a council meeting:
 - draft the summonses and agendas so the identity and subject matter of the complaint are not disclosed
 - ensure that any background papers are not made public
 - ensure that the public and press are excluded from meetings where appropriate
 - ensure that the minutes of meetings are written so as to preserve confidentiality
 - make appropriate arrangements, where the complainant is an employee, between the employee and the subject member.
- Take into account who will deal with providing further evidence or information needed by the standards committee about a complaint, be it the nominated employee or a member of the selected council committee.


By having appropriate arrangements in place your parish or town council will ensure that the rights of all concerned in a complaint will be considered. They will also ensure that complaints are dealt with lawfully, effectively and fairly, and will identify only those who need to know or are entitled to know certain information at the various stages of a complaint.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 4th January 2010.

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Lobbying

Lobbying is covered by paragraphs 8 to 12 of the Code of Conduct.

What is Lobbying?

Lobbying and campaigning is the practice of influencing decisions made by government at a national or local level. Many local councillors are involved in a number of groups or campaigns either as a member of a particular interest group or as an individual.

What should I do?

1) Register your interest

Membership of lobby or campaign groups should be included on your register of interests, as these are bodies "whose principal purposes include the influence of public opinion or policy".

Even if your lobby group does not keep a formal membership list, the Code of Conduct still applies to you. If you are acting as a member of the group – perhaps attending meetings or participating in group activities – you should still register your membership of the group and declare interests, where appropriate.

2) Declare your interest

If you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority you are required to declare a personal interest.

You will not normally have a personal interest in the related discussion or decision of your authority if you merely campaigned on an issue as an individual, perhaps during an election campaign, but you are not a member of or in a position of general control or management of a lobby group campaigning on the same issue.

You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions.

You can continue to participate unless the interest is also prejudicial.

3) Consider whether to withdraw from the meeting

Under the Code of Conduct, you only have to withdraw from a meeting where your personal interest is also prejudicial.

You cannot have a prejudicial interest in a matter if:

- The matter falls within one of the exempt categories of decisions under paragraph 10(2) (c). A full list of exempt categories can be found in the Standards Board's Code of Conduct guidance, which is available on our website - www.standardsforengland.gov.uk
- The matter does not affect your financial interests or does not relate to a licensing or regulatory matter brought by you or a person or body in which you have a personal interest.

For example, you will not have a prejudicial interest in a developer's planning proposal which you and any groups you are a member of have campaigned against, if you, any person, or any body you have a personal interest in is not financially affected by the proposal.

If your personal interest in a matter falls outside the exempt categories mentioned above, and does affect your financial or regulatory interests, you will then have to consider the following general test for prejudicial interests:


- Would a member of the public, who knows the relevant facts, reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest?

If the answer is 'yes' then you would have a prejudicial interest.

If a prejudicial interest arose, you would still be allowed to address the meeting on the issue in order to answer questions or make representations, provided that same right was available to members of the public.

Find out more

- The Code of Conduct: Guide for members May 2007 offers more guidance on the Code and can be downloaded [here](#).
- Call our enquiries line on **0845 078 8181**
- Email us at enquiries@standardsforengland.gov.uk

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Independent members

Who is an independent member?

Independent members are members of standards committees with no link to the authority they are overseeing. They are important in helping increase public confidence in the local standards framework. They provide a clear signal that the standards committee is acting fairly and impartially. Independent members also bring a wider perspective from their outside experiences. A person can only be an independent member if they:

- have not been a member or employee of the authority for the previous five years, or
- are not a member or officer of that or any other relevant authority, or
- are not a relative or close friend of a member or employee of your authority.

Attributes and skills of an independent member

Coming from outside the authority gives the independent member a different perspective and gives balance to the standards committee. Some of the attributes and skills expected of an independent member are:

- a keen interest in standards in public life
- a wish to serve the local community and uphold local democracy
- high standards of personal integrity
- the ability to be objective, independent and impartial
- sound decision-making skills
- questioning skills
- leadership qualities
- the ability to chair meetings.

The process of selecting an independent member

The position of independent member will be published in at least one local newspaper and in other similar publications or websites.

Each authority will have slightly different procedures for the recruitment of independent members but all will have an application and interview process. The appointment of an independent member has to be approved by a majority of the members of the council.

Each authority decides how to select independent members and how long an independent member should sit on the committee. This period of time should be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that independence is lost.

Independent members on multiple standards committees

An independent member can be a member of several standards committees, for example on county and district committees. Independent members may also be temporarily appointed to another standards committee to consider a particular assessment, review or hearing or for a particular period of time. For example, an independent member can be appointed to a neighbouring standards committee for a short period in situations where a permanent member is unwell or if there is a conflict of interest.

Reappointment of independent members


Standards for England recommend independent members should serve no longer than two four year terms, but this is at the discretion of each authority.

Independent members cannot be automatically reappointed, and must go through a recruitment process.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 4th January 2010.

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Gifts and hospitality

Gifts and hospitality are covered by paragraphs 8 and 13 of the Code.

What do I have to do?

- You must register any gifts or hospitality worth £25 or over.
- You must also register the donor (for example, the person, company or body) of the gift or hospitality.
- You only have to register gifts that you receive in connection with your official duties as a member. You do not have to register other gifts and hospitality, such as birthday gifts from family.
- Ask yourself "Have I been given this because I am a member?" If the answer is "yes" then you must register the item.
- You should register an accumulation of small gifts you receive from the same donor over a short period that add up to £25 or more.
- You must register the gift or hospitality and its donor within 28 days of receiving it, and if an accumulation, when it gets to £25.

What are the implications?

- You will have a **personal interest** in a matter if it relates to, or is likely to affect, the donor of the gift or hospitality that is registered.
- You must declare the existence and nature of the gift or hospitality, the donor and how the business under consideration relates to that donor. You must then decide whether that interest is also a prejudicial interest.
- If more than three years have passed since you registered the gift or hospitality, you will no longer have to declare a personal interest in a matter that relates to or is likely to affect the donor.

For further information on interests see our factsheet on personal and prejudicial interests.

What happens if I do not know the value of the gift?

- We suggest you register it anyway as a matter of good practice.

Do I have to register gifts or hospitality I do not accept?

- No, but you may wish to do so as a matter of good practice.

What does “hospitality” mean under the Code?

- Hospitality can be defined as any food, drink, accommodation or entertainment provided free of charge or heavily discounted.

Do I have to register the interests of the donor of the gifts or hospitality?

- No. We believe the Code only requires you to register the gift or hospitality worth £25 or over, received in connection with your official duties, and the donor of that gift or hospitality.

Do I have to register gifts or hospitality from council-owned companies?

- Yes. Wholly-owned companies are separate bodies from the authority.


What about official gifts or hospitality given to the civic mayor or chair of a council?

- There are no special rules for those who serve as mayor or chair of an authority.
- Gifts that are clearly made to the authority do not need to be registered.
- Gifts made directly to a mayor or chair's charity appeal also do not need to be registered.
- We take the view that there is no requirement under the Code to register hospitality, if that hospitality has been extended to the office holder for the time being rather than the individual.

Find out more

- The Code of Conduct: Guide for members May 2007 offers more guidance on the Code and can be downloaded [here](#).
- Call our enquiries line on **0845 078 8181**
- Email us at enquiries@standardsforengland.gov.uk

Published on 15 October 2009.

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Freemasons and the Code of Conduct

What is a Freemason?

Freemasonry is one of the world's oldest secular, fraternal and charitable societies. The United Grand Lodge of England administers Lodges of Freemasons in England and Wales. When freemasons pay their annual subscription fee to their respective Lodges, part of the fee goes automatically to the Freemasons' Grand Charity. The United Grand Lodge distributes charitable grants to individuals and groups through the Grand Charity.

Why do I need to declare my membership?

Personal and prejudicial interests are covered by paragraphs 8-13 of the Code of Conduct.

You have a personal interest in any business of your authority where either it relates to or is likely to affect any body directed to charitable purposes.

Overall, freemasons are not singled out by the Code. The Code applies to membership of any body that is directed to charitable purposes.

Under paragraph 8(1)(a) (ii) (bb) of the Code, freemasons who are members of the Grand Charity must register membership of the Grand Charity in their register of members' interests and, where appropriate, declare their membership of the Grand Charity as a personal or prejudicial interest before or during council meetings. If an individual lodge is one which has charitable status or could be described as a body directed towards charitable purposes, then membership of that lodge would also need to be registered.


Councillors who are freemasons will also need to declare membership of their lodge as a personal interest in a matter to be discussed if that matter would affect the member to a greater extent than the majority of other people in the area affected by the decision. The member will also need to consider whether that interest is prejudicial. For example, if the councillor's own lodge was making a planning application it would be necessary to declare a personal and prejudicial interest when that matter is considered.

The recent government decision that freemasons will no longer need to declare their membership when applying for positions on the judiciary does not affect the need to register membership as an interest under the Code.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 4th January 2010.

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Disclosing Confidential Information

Confidential information is covered by paragraph 4(a) of the Code

Paragraph 4(a) of the Code says you must not disclose information given to you in confidence by anyone. You must also not disclose information which you believe, or ought reasonably to be aware, is of a confidential nature – except where certain exceptions apply.

What is 'confidential information'?

Information is a broad term. It includes facts, advice and opinions. It also covers written materials, including tapes, videos, CDs, DVDs and other electronic media.

Information is confidential:

- if it is about something serious and not trivial
- if the nature of the information is sensitive or personal, for example it is a business secret
- if it is information that you would expect people would want to be private
- if it was divulged in a way which implied it should be kept confidential
- if disclosing the information would be detrimental to the person who wishes to keep it confidential

If the council, the executive or a committee of the council has voted to treat the information as exempt, then you should maintain it as confidential.

When can confidential information be disclosed?

You are able to disclose confidential information when:

- the person authorised to give it has given you the consent to disclose it
- you are required by law to do so
- the disclosure is made to a third party in order to obtain professional advice, for example a lawyer
- the disclosure is in the public interest.

Justification for disclosure in the public interest

Disclosing confidential information in the public interest can only be justified when **all** of the following points are met:

- **the disclosure must be reasonable** – this is a matter of judgment. However, when making this decision, you should consider carefully why you want to disclose the information, whether it is true, how serious the

issue is and who to tell

- **the disclosure must be in the public interest** – information is in the public interest if:
 - a criminal offence is committed
 - the authority fails to comply with its legal obligations
 - a miscarriage of justice occurs
 - the health and safety of an individual is in danger
 - the environment is likely to be damaged
 - information about any of the issues above is deliberately concealed
- **the disclosure must be made in good faith** – the disclosure will not be justified if it is being made to promote your interests or is for political gain
- **the disclosure must be made in compliance with any reasonable requirements of your authority** – you must first raise your concerns through the appropriate channels set out in your authority's policies and procedures. For example, policies on whistle-blowing or member-officer relationships should be followed before making a disclosure.


When would a public interest disclosure not be justified?

If the disclosure would amount to a criminal offence or when information is protected by legal professional privilege, it is unlikely that its release could be justified as being in the public interest.

Find out more

- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at enquiries@standardsforengland.gov.uk

Published on 8 October 2009.

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Bullying and the Code of Conduct

Paragraph 3(2)(b) of the Code of Conduct says 'you must not bully any person'. This includes other members, officers and members of the public.

What is 'bullying'?

We characterise bullying as offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, (but within the scope of the Code of Conduct).

It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

What are the consequences of bullying?

When officers are bullied, it can affect the authority's ability to provide services. This is because bullying can create a working environment with an atmosphere of mistrust, insecurity and fear.

In some cases, bullied officers require long periods of leave because of ill-health or stress which can damage the running of an authority. This can particularly be the case in parish and town councils, where there may only be a small team of employees. Quite often, officers feel unable to return to their role.

What about criticism of officers?

Criticism of officers will not in itself constitute bullying. Members are allowed to express disagreement with officers, and question officer performance, so long as it is done in an appropriate and private way. A personal attack, or criticism that is offensive, is likely to cross the line of what is acceptable behaviour.

Complaining about bullying

If you believe you have been the victim of bullying by a member you can complain to the local standards committee. Information about making a complaint to a local standards committee can be found [here](#).

Anyone alleging bullying should:

provide examples of the words or actions used provide clear, objective evidence of bullying try to describe the specific behaviour they are concerned about, providing dates, times and locations. This is because it is more


difficult to judge bullying from general remarks.

Find out more

Please read our Code of Conduct: Guidance for members 2007

Call our enquiries line on 0845 078 8181

Email us at enquiries@standardsforengland.gov.uk

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Predisposition, Predetermination or Bias, and the Code

Both predetermination and bias have proved to be difficult and controversial issues for many councillors and monitoring officers. Although they are judge-made, common law issues, and not part of the Code of Conduct, Standards for England is publishing this up-dated guide to help clarify the issues.

We originally published a paper on this issue in August 2007. It was based on advice from leading treasury counsel Philip Sales QC, which can also be found on our website.

This new version of the paper aims to clarify the issues involved. It includes examples of where councillors are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.

This area of law is constantly developing which is why the paper has been revised. However, members should refer to their monitoring officers for the most up-to-date position.

What is predisposition?

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.

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.

How can predetermination or bias arise?

The following are some of the potential situations in which predetermination or bias could arise.

Connection with someone affected by a decision

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

Example:

a) A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a councillor panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

b) The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and has no involvement with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.

Improper involvement of someone with an interest in the outcome

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

Example:

A local authority receives an application to modify the Definitive Map of public rights of way.

A panel of councillors is given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

Prior involvement

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

Example:

A councillor of a local highway authority, who is also a member of a parish council that has been consulted about a road closure, could take part in the discussion at both councils. The important thing is that the councillor must be prepared to reconsider the matter at county level in the light of the information and evidence presented there.

Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.

If the councillor is merely seeking to lobby a public meeting at which the decision is taking place, but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

Example 1:

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

Example 2:

A developer has entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator has already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new councillors who have campaigned against the incinerator and a full debate, the council's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

Predetermination or Bias, and the Code

There is a difference between breaching the Code and being predetermined or biased. It is perfectly possible to act within the Code and still cause a decision you were involved in to be bad for predetermination or bias.

Example:

Under the Code, a councillor may take part in considering whether or not to grant a planning application which is recommended for refusal by planning officers and made by a colleague with whom they do not share a "close association". Nevertheless, because the councillor is the Chair of the planning committee, uses his casting vote to decide in favour of his colleague, and regularly shares a car with that colleague when coming to council meetings, this gives rise to an appearance of bias.

Conclusion

When making administrative decisions like whether or not to grant planning permission, councillors are entitled to have and express their own views. However, this is as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.


Relationship to the Code of Conduct

The Adjudication Panel for England (APE) in case reference 0352 has also looked at the relationship between the Code and predetermination and gave an indication that where such issues arise there is a potential paragraph 5 **Code breach**. The outcome is likely to depend on the individual circumstances of a case and any other Code issues and breaches. This is because a councillor who renders the decision of a council unlawful due to predetermination could reasonably be regarded as bringing that authority or his office into disrepute.

An important issue for members is that by and large predetermination will not amount to a personal or prejudicial interest. Therefore there is no specific requirement to declare an interest and leave the room under paragraphs 8 to 10 of the Code. Members may however find themselves the subject of a complaint under paragraph 5 on disrepute. This paragraph of the Code has no provision for declaring interests or leaving meetings.

For more information on the issue of predetermination or bias, councillors should talk to their monitoring officers or their political group.

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