



INTEGRITY IN PUBLIC LIFE

COUNCILLORS' CODE OF CONDUCT – ADVICE FOR MEMBERS OF THE PUBLIC

1. Who is this advice for?

- 1.1 Members of the public, especially anyone who is thinking of making a complaint about a councillor.

2. What does this advice cover?

2.1 This advice covers:

- the different sections of the Councillors' Code of Conduct (Code) and what they mean, in a user-friendly format;
- what is not covered by the Code and the complaints process;
- complaints about councillors breaching the Code; and
- the Hearings process.

3. What does the Code cover?

- 3.1 The Code first came into effect in 2003. Since then it has been updated, with the most recent version issued in 2021. There is also Guidance, and Advice Notes on particular parts of the Code. You can find all of these on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/>.

- 3.2 By law, councillors in Scotland have to follow the terms of the Code. If they are found to have breached the Code's rules, the Standards Commission can:
- censure them (give them a formal warning);
 - suspend them from some of their duties as a councillor for a period of time; or
 - in serious cases, disqualify them from being a councillor.

3.3 The Code has seven sections:

- Introduction to the Code
- Key Principles of the Code
- General Conduct
- Registration of Interests
- Declaration of Interests
- Lobbying and Access
- Taking decisions on Quasi-Judicial or Regulatory Applications

- 3.4 In addition, the Code has three Annexes:
- Annex A: Protocol for Relations between Councillors and Employees (this outlines the way in which councillors and employees should behave towards one another)
 - Annex B: Definitions
 - Annex C: Breaches of the Code (this outlines how complaints about potential breaches of the Code are investigated and adjudicated upon).

3.5 This advice note is not intended to be a complete guide to the Code. Instead, it sets out some of the most important points to bear in mind if you are concerned about how a councillor has behaved.

4. Section 1: Introduction to the Code

4.1 The introduction to the Code sets out the background to the Code and the law surrounding it. It also explains that councillors are only expected to abide by the Code when they are acting as, or could be seen to be acting as, a councillor. This means that it does not apply to a councillor's private life and their conduct or behaviour when they are acting in a purely private capacity.

4.2 The fact that you might know that someone is a councillor does not necessarily mean the Code will apply. Some examples of when it was decided that the Code **WOULD APPLY** are described below:

A councillor shared an antisemitic article on a Facebook page set up for his re-election campaign. The Panel accepted the councillor had not referred to himself as a councillor when sharing the article. The Panel nevertheless was of the view that, when considering the councillor's course of conduct, when sharing and encouraging others to read the article and subsequently defending it in the national press, it would have been reasonable for a member of the public to have perceived that he had been acting as a councillor. This was because he was identified in press coverage of the matter as a councillor, had used council equipment to share the article and had sent an apology email about the article from his council email account. In addition, the councillor had continued to use the campaign Facebook page after being elected and the article concerned a local authority related issue.

A councillor was convicted of sexual assault in respect of an incident that occurred at a Trades Association event. The Panel was satisfied that it would have been reasonable for an informed member of the public to have perceived that the councillor was acting as a councillor at the event, given both the public nature of it and also because the invitation to attend had originally been sent to another councillor, a party group leader, before being passed on. The Panel concluded that the Code applied.

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

4.3 Some examples of when it was decided that the Code **WOULD NOT APPLY** are described below:

A councillor who sexually harassed a member of the public in private transport, and at a private residence, after a non-council related event was not considered to be acting as a councillor during either incident and, as such, the Code did not apply.

A councillor met a member of the public at a council run event and subsequently entered into a personal relationship. The councillor was then abusive towards the member of the public on a night out. As the councillor was not acting in his capacity as a councillor at the time of the incident, the Code would not apply to his conduct.

A councillor attended a family wedding and introduced himself as a councillor. The councillor then became involved in a fight with another guest. The press later reported that the councillor has been charged with disorderly conduct and assault. The Code would not apply because while the councillor had introduced themselves as a councillor, it would not be reasonable for members of the public to consider that he was attending the wedding (being a private event) in that capacity. The fact that he was subsequently identified as being a councillor in the media and the criminal charges would not alter this or mean that the Code would apply.

5. Section 2: Key Principles of the Code

5.1 The Code is based on nine key principles that guide how councillors should behave. These are:

- Duty
- Selflessness
- Integrity
- Objectivity
- Accountability and Stewardship
- Openness
- Honesty
- Leadership
- Respect

5.2 These key principles are included for guidance and to help with the interpretation of the rest of the Code. However, the Standards Commission cannot take action on a breach of a key principle alone, without a breach of a part of the rest of the Code.

6. Section 3: General Conduct

6.1 Councillors are expected to behave respectfully towards other people. That includes fellow councillors, Council employees, or members of the public. Bullying or harassment (including sexual harassment) would be a breach of the Code.

6.2 Councillors can ask for information on a constituent's behalf. They can tell Council employees of their constituents' views, or help them make their views known to the relevant Council employee. However, they cannot pressure employees to overturn a Council decision (for example, on the allocation of Council housing).

6.3 The Code only permits councillors to accept gifts or hospitality in very limited circumstances. This is to stop people or organisations from giving them gifts or offering hospitality to try to influence the decisions they make.

- 6.4 Constituents, or Council employees, often tell councillors things in confidence or give them information that is not to be made public at that time. The Code says a councillor should keep such information confidential - even if they think it should be made public.
- 6.5 Councillors can only use Council facilities to undertake their role as councillor. This includes things like IT equipment, email accounts and photocopying facilities. Councillors should not use such facilities for their own personal interests (unless their Council has allowed them to do so), or for political messages or campaigning.
- 6.6 Councillors are not allowed to take advantage or try to take advantage of their position or influence as a councillor to obtain preferential treatment for themselves or their family or friends.
- 6.7 Councils often appoint councillors to partner organisations. If a councillor has been appointed to a partner organisation, they need to look out for and manage conflicts of interest between that organisation and the Council.

7. Section 4: Registration of Interests

- 7.1 Each Council must maintain and publish Registers of Interests for all its councillors. It is each councillor's responsibility to update the Register with any interests that might affect their role as a councillor. The Register is split into nine sections:
- Remuneration – what jobs councillors have and any other sources of income.
 - Other Roles – this is where a councillor is a director of certain types of company.
 - Contracts – where a councillor, or a company they have a significant interest in, has a business relationship with the Council through a contract.
 - Election expenses – this covers donations above £50 to a councillor's election expenses, including in the year before election.
 - Houses, Land and Buildings – a councillor's property interests in Scotland.
 - Interest in Shares and Securities – any investments the councillor holds, above a certain level.
 - Gifts and Hospitality – any gifts or hospitality the councillor has accepted under a previous version of the Code (as councillors are now only allowed to accept gifts and hospitality in very limited circumstances, there is no longer a need for them to register any).
 - Non-financial interests – this covers things like membership of clubs, societies, or other organisations like trade unions.
 - Close Family Members – this covers close family members who have, or might have, business with the Council.

8. Section 5: Declaration of Interests

- 8.1 Councillors, like anyone else in public life, will have many interests. They will also have connections to other people and organisations. What is important for the purpose of the Code is that any conflicts of interest should be declared publicly, and that the councillor does not take part in discussing or deciding a matter where an interest they have could be seen to influence them.
- 8.2 The Code asks councillors in this situation to apply the 'objective test' to their situation. The test is: *whether a member of the public, with knowledge of the relevant facts, would reasonably regard a councillor's connection to a particular matter as being so significant that it would be considered as being likely to influence the councillor's discussion or decision making.*

8.3 This is often a difficult decision for a councillor. The Code states that councillors should ask for advice from Council employees if they are unsure.

8.4 An example of an interest that would need to be declared is where a councillor has a financial stake in the decision being made by the Council, for instance, or where their partner's employment could be affected by the decision. In such situations, the councillor should declare an interest and withdraw from the meeting while the decision is taken.

9. Section 6: Lobbying and Access

9.1 It is part of a councillor's duties to be open to all views, and for anyone – members of the public or organisations – to be able to have access to them. This means that they can be lobbied by people with a particular interest. This will often be on things like planning or licensing applications.

9.2 The Code recognises that councillors will be lobbied. However, councillors should not indicate whether they support the point of view being made to them or not, if they then want to take part in the decision that they are being lobbied on. They should only make up their minds on matters such as planning and licensing applications when they have heard all the arguments. That is when they have all the facts presented to them at the committee meeting where the decision is to be made.

9.3 The fact that councillors should provide access to all does not mean that they always have to answer all correspondence or telephone calls from a member of the public. This is particularly the case if the councillor is unable to assist or has already directed the member of the public towards the appropriate Council employee who can help.

10. Section 7: Taking Decisions on Quasi-Judicial or Regulatory Applications

10.1 Section 7 goes into more detail about planning, licensing and other applications that the Council has to decide. Decisions like this will often affect individuals, so it is especially important that councillors are seen to be giving applicants a fair hearing. An example would be a taxi driver applying for renewal of their licence.

10.2 Councillors come into contact with these types of decisions in various ways – for example if they sit on a planning or licensing committee.

10.3 Any interests a councillor has in relation to such applications should be declared at the meeting. Having declared the interest, the councillor should leave the room while the application is discussed and the decision taken.

11. What isn't covered by the Code and the complaints process

11.1 The Code does not:

- require councillors to respond to all correspondence;
- restrict councillors from holding or expressing political views;
- prevent councillors from making enquiries on behalf of a constituent about a service the Council has provided or a decision it has taken; or
- prevent councillors from helping constituents make their views known to the relevant Council employee.

- 11.2 Certain matters are not covered by the complaint process, such as:
- complaints about decisions councillors have made (unless they have made the decision in an unfair way or not in accordance with Council policy / rules);
 - the performance of councillors, such as how well they engage with their constituents;
 - complaints about Council services;
 - complaints about decisions made by Councils (such as planning applications or licensing decisions);
 - general complaints about the Council as a whole; and
 - complaints about Council employees.
- 11.3 More information about how to complain about these matters can be found on the complaints section of the relevant Council's website.

12. Complaints about councillors breaching the Code

- 12.1 There are two bodies involved in dealing with complaints about breaches of the Code - the Ethical Standards Commissioner (ESC) and the Standards Commission.
- 12.2 Anyone can make a complaint to the ESC. If you think a councillor has breached the Code, you should make your complaint to the ESC via its website <https://www.ethicalstandards.org.uk/complaints>. You will be asked to identify which parts of the Code you think have been breached. Before making the complaint, you should look at the wording of the Code itself, and the Standards Commission's Guidance and Advice Notes: <https://www.standardscommissionscotland.org.uk/>.
- 12.3 Upon receipt of a complaint, the ESC will investigate and gather evidence. The ESC's staff will guide you through the process. It is possible that one of the ESC's investigators will interview you.

13. The Hearings process

- 13.1 When the ESC has completed its investigation, it will pass an investigation report to the Standards Commission. It will then be for the Standards Commission to decide whether to hold a Hearing on the complaint.
- 13.2 If the Standards Commission decides to hold a Hearing, you may be asked to attend and give evidence. Hearings are usually held in public at the headquarters of the Council in question.
- 13.3 The purpose of a Hearing is to determine whether the councillor has breached the Code. After hearing all relevant evidence, the Standards Commission will decide whether there has been a breach of the Code. If a breach of the Code is found, the Standards Commission will decide whether to censure the councillor, suspend them from some of their duties for a period of time (for example, to suspend them from sitting on the planning committee for a number of months); or disqualify them from sitting as a councillor.

14. Further Information

- 14.1 If you require further information, please contact the Standards Commission via email at enquiries@standardscommission.org.uk