

GUIDANCE ON CODE OF CONDUCT

This document is based on guidance produced by the Monitoring Officers of the seven principal authorities in Cumbria. It offers guidance on the Code of Conduct that town and parish councils in each district area are recommended to adopt from 1st July, 2012. It differs from the guidance for members of principal authorities in two respects only : the term “council” is used rather than “authority” and references to certain principal authority governance arrangements (eg Cabinet and Scrutiny) have been omitted to avoid confusion. In all other respects this guidance for members of town and parish councils, including co-opted members, is similar to that for principal authority members. It should be read in the context, however, that principal authorities operate differently in some respects, particularly as regards political groups.

The code does not apply to the actions of councils as a whole, or to the conduct of its officers and employees.

Ultimately, it is the members’ responsibility to take specific advice from the clerk where appropriate and to make a decision as to the most suitable course of action.

Code of Conduct

The Code of Conduct (“the Code”) is not intended to be an exhaustive list of all the obligations that are placed on members, but it is the responsibility of individual members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time.

The Code is intended to be consistent with the seven principles attached to the Code which define the standards that members should uphold. A failure to act in accordance with these general principles may amount to a breach of the Code of Conduct. For example, by placing yourself in situations where your honesty and integrity may be questioned, your conduct may be conduct which could “bring your office or your council into disrepute”.

When does the Code apply to you?

The Code applies to you whenever you act in your official capacity as a member or co-opted member of the council.

For the purposes of the Code, a “meeting” is a meeting of the council, any of its committees, sub-committees, joint committees or joint sub-committees.

General Obligations under the Code

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend, a close associate, an employer or business carried on by you.

For example, your behaviour would be improper if you sought to further your private interests through your position as a member.

You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your official duties.

It would not be appropriate to accept favours, gifts or hospitality from someone that may, at a later date, require something from the council that you are in a position to influence. For example, you may be offered a discount by a business in the area which subsequently applies for planning permission and/or a licence. You may be on the relevant committee dealing with the application and, therefore, be in a difficult position.

You must not disclose any information given to you as a Member in breach of any confidence

There may be circumstances where you are required to do so by law but you should seek the advice of the clerk if there is any doubt about this.

You must not disclose confidential information, or information which you believe to be of a confidential nature, except in any of the following circumstances:

- You have the consent of the person authorised to give it.
- You are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.
- The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
 1. the disclosure must be reasonable
 2. the disclosure must be in the public interest
 3. the disclosure must be made in good faith
 4. the disclosure must be made in compliance with any reasonable requirements of your authority

In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to reoccur.

- Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your council or some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.
- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your council's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

You must not bring your office or your Authority into disrepute

You must not bring your office or authority into disrepute whilst acting in your official capacity.

As a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on your office or your council. Dishonest and deceitful behaviour in your role as a member may bring your council into disrepute, as may conduct in your private life which results in a criminal conviction, such as dishonest, threatening or violent behaviour.

You must treat others with respect and promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Respect

You must treat others with respect. In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the politics and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attacks. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst there may be unreasonable demands on members, members should, as far as possible, treat people courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

Equality

You must not do anything which may cause your council to breach any equality laws. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your council to breach the law, and you may find yourself subject to a complaint that you have breached this paragraph of the code of conduct.

Impartiality and integrity of officers of the authority

You should respect the impartiality and integrity of the council's statutory officers and its other employees.

You should not approach or pressure anyone who works for, or on behalf of the council, to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit.

As an elected member of the council you are responsible for administering resources on behalf of the public of the area that you serve. You should administer these resources fairly and in accordance with the law. It is inappropriate for the council's resources or powers to be used in such a way that the council and its members be left open to accusations that inappropriate influence played a part, for example, "it's not what you know, it's who you know!"

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

This requirement is linked to carrying out all duties in a fair and transparent manner. Members are able to be held to account for their actions and, this being the case, you must be open to and cooperate with any legitimate scrutiny that is to be applied.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

The law requires that members give reasons for their decisions. This is so that the public we serve are able to understand why we have taken a course of action and, if necessary, exercise any right of challenge that is open to them.

You must declare any private interests, both disclosable pecuniary interests and any other registrable interests, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interest in a matter which conforms to the procedures within the code.

The Code of Conduct contains a scheme for the registration of interests. It exists to support openness and transparency; the public are able to see where you may have an interest. Secondly, the scheme of registration exists to protect individual members against accusations of a conflict of interest etc. Lastly, the registration of disclosable pecuniary interests is required by law.

You must ensure, when using or authorising the use by others of the resources of your authority, that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Where your council provides you with resources you must only use these resources for carrying out your local authority business and any other activity which your council has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your council. Failure to comply with the council's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use your council's resources, you must take care to ensure that this is allowed by the council's rules.

You should never use council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

You must promote and support high standards of conduct when serving in your office.

You have a duty to promote and support high standards of conduct and be consistent with the seven general principles attached to the Code.

INTERESTS

Register of interests

Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

You have two types of registrable interests

- a) A Disclosable Pecuniary Interest and
- b) Interests other than pecuniary interests that the council has decided should be registered

Disclosable Pecuniary Interests

1. These are interests which must be notified to the Council's Monitoring Officer within 28 days beginning with the day on which you become a member or co-opted member of the authority in accordance with the statutory requirements of the Localism Act 2011. These are enforced by criminal sanction, and failure to declare is a criminal offence.
2. You need to register your interests so that the public, council staff and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a potential conflict of interest.
3. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local government is maintained.
4. A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) of the following descriptions:
 - (a) Details of any employment, office, trade, profession or vocation carried on for profit or gain
 - (b) Details of any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. (This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
 - (c) Details of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority under which goods or services are to be provided or works are to be executed; and which has not been fully discharged.

- (d) Details of any beneficial interest in land which is within the area of the relevant authority.
- (e) Details of any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
- (f) Details of any tenancy where (to your knowledge) the landlord is the relevant authority; and the tenant is a body in which the relevant person has a beneficial interest.
- (g) Details of any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of the relevant authority; and either the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or if that share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For the purposes of the foregoing “relevant authority” means the town or parish council, and “relevant period” means the period of 12 months ending with the day on which you notify the Monitoring Officer of your disclosable pecuniary interest.

Notification of Other Interests

5. In addition to the disclosable pecuniary interests, you must, within 28 days of the Code being adopted by or applied to your authority; or your election or appointment to office (where that is later), notify the Monitoring Officer in writing of the details of any other interests that your council has decided must be included in the register of interests. These might include the following :

- (a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the District Council;
- (b) Details of any body of which you are a member or in a position of general control or management and which –
 - (i) exercises functions of a public nature,
 - (ii) is directed to charitable purposes or
 - (iii) is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade union;
- (c) Details of any persons from who you have received a gift or hospitality with an estimated value over a specified limit. (You must register any gifts and hospitality worth the specified limit that you receive personally in connection with your official duties).

What is a “body exercising functions of a public nature”?

6. Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?

- Is the body taking the place of local or central government in carrying out the function/
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer “yes” to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature.

Examples of bodies included in this definition: government agencies, other councils, public health bodies, council-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of your authority, school governing bodies.

If you need further information or specific advice, please contact your monitoring officer.

What do things mean?

Here are some definitions from the legislation that may help you. Ask for advice if necessary:

“the Act”	means the Localism Act 2011;
“body in which the relevant person has a beneficial interest”	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
“director”	includes a member of the committee of management of an industrial and provident society;
“land”	excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;
“M”	means a member of a relevant authority;
“member”	includes a co-opted member;

"relevant authority"	means the authority of which M is a member;
"relevant period"	means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;
"relevant person"	means (i) M (ii) M's spouse or civil partner, (iii) a person with whom M is living as husband and wife, or (iv) a person with whom M is living as if they were civil partners,
"securities"	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Gifts and Hospitality

7. You must register the gift or hospitality and its source within 28 days of receiving it.
8. You should ask yourself would I have been given this if I was not on the council?
If you are in doubt as to the motive behind a gift or hospitality, we recommend

that you register it or speak to the Monitoring Officer or your parish clerk where appropriate.

9. You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position or if your authority requires you to.

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

10. The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.
11. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you received from the same source over a short period that add up to the specified limit should be registered.

Changes to Interests

12. You must, within 28 days of becoming aware of any new interest or change to any interest registered notify the Monitoring Officer of the details of that new interest or change.

Disclosure of Interests

13. Where you have a registrable interest in any business of your council, and where you are aware or ought reasonably to be aware of the existence of that interest, and you attend a meeting of your council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

Sensitive interests

14. Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

What is sensitive information?

15. It may include your sensitive employment (such as certain scientific research or the Special Forces) or other interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you.
16. You should provide this information to your monitoring officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. You do not need to include this information in your register of interests, if your monitoring officer agrees but you need to disclose at meetings the fact that you have a disclosable pecuniary interest in the matter concerns.

Non participation in case of disclosable pecuniary interest

17. If you are present at a meeting of the council, or any committee, sub-committee, joint committee or joint sub-committee of the council, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting:

- You may not participate in any discussion of the matter at the meeting.
- You may not participate in any vote taken on the matter at the meeting.
- If the interest is not registered, you must disclose the interest to the meeting.
- If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

In addition, Standing Orders (subject to your council's decision) usually require you to leave the room where the meeting is held while any discussion or voting takes place.

Dispensations

19. Your council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest. These circumstances are where:

1. It is considered that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
2. That, without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
3. That the authority considers that the dispensation is in the interests of persons living in the authority's area
4. That the authority considers that it is otherwise appropriate to grant a dispensation.

Offences

20. It is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest

- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

Bias/Predetermination

Although not part of the code, members need to be clear that they are not biased going into the decision making process.

If you have a personal interest in a matter as a result of the matter affecting the well-being or financial position of yourself, member of your family or close association more than it would affect the majority of other people in the ward or parish affected by the decision then there may be potential for bias/predetermination.

The rules against bias say that there are three distinct elements. The first seeks accuracy in public decision-making and the second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices.

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.

To varying degrees, these "requirements" might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: "automatic" (or "presumed") bias, "actual" bias and "appearance" bias.

The rationale behind "automatic" or "presumed" bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased *in fact*. **In these circumstances you should not participate in a decision.**

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or in-directly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

So, you are entitled to have a pre-disposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day.

What does "affecting well-being or "financial position" mean?

The term “well-being” can be described as a condition of contentment and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being.

A personal interest can affect you, your family or close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, a personal interest would need to be declared in both situations.

Who is a member of your family or close association?

A member of your family should be given wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, parent-in-law, a son or daughter, a stepson, or stepdaughter, the child of a partner, a brother or sister of yourself or your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece and the partners of any of these people.

A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.

What if I belong to a council without wards?

If you are a member of a council that does not have wards, you will need to declare a personal interest whenever you consider a matter in a meeting of your council if it affects the well-being or financial position of you, your family or people with whom you have a close association, more than it would affect other people in your council's area.

What if I am not aware of my personal interest?

Clearly you cannot be expected to declare something of which you are unaware. However you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

When must I leave the room where the meeting is held?

You must leave immediately before any debate starts.

Non participation in case of pecuniary interest

Disclosable Pecuniary Interests

Subject to the paragraph below, if you have a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, then you should declare that interest to the meeting and should leave the room whilst any discussion or vote takes place.

If a dispensation has been granted to you in relation to a disclosable pecuniary interest then, subject to the terms of the dispensation, you may be relieved from the above restrictions but will still be required to declare the interest to the meeting.

Where you have a disclosable pecuniary interest in any business of the council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. Once any such representations etc have been made, the member should leave the room whilst any discussion or vote takes place.

This would mean that as under current arrangements members will leave the room during an item in which they have a DPI.

In the interests of transparency it is good practice for you to make the nature of a disclosable interest known when such a matter arises at a meeting. You should identify the nature of the interest which you have in any matter so that is known and understood by all and is a matter of public record. If a declaration is not made, other than through the register, it would not necessarily be apparent to anyone who is present at the meeting why a particular Member is not participating or voting in any matter.