

## **COUNCILLOR CODE OF CONDUCT REFRESHER TRAINING**

Notes to accompany Slidedeck (NB: Not every slide has notes)

### **Slide 2 - Overview**

A good overview of the subject is provided in Briefing Paper Number 05707, 14 September 2020 “Local government standards in England” by Mark Sandford  
<http://researchbriefings.files.parliament.uk/documents/SN05707/SN05707.pdf>

### **Slide 4 – Nolan Principles**

The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.

#### **Selflessness**

Holders of public office should act solely in terms of the public interest. They must never use their position as members to improperly confer an advantage on, or to avoid a disadvantage for, themselves or to improperly confer an advantage or disadvantage on others.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships. Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest. Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

#### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias. In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

## **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

## **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

## **Honesty**

Holders of public office should be truthful.

## **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs. Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

## **Slide 5 – Why do we need rules?**

See the LGA Model Code of Conduct for a very clear exposition of the rules. The accompanying guidance is also instructive and can be accessed here:

<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>

## **Slide 6 – Purpose of Codes of Conduct**

The LGA Model Code can be accessed at:

<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>

## **Slides 9 & 10 When does the Code Apply?**

It used to be the case in England that what you did in your private life could also be considered to be a breach of the Code until the Ken Livingstone case. In that case, Ken Livingstone referred to a Jewish reporter as a “concentration camp guard” because he had been told to try to press him for a response. (Apparently he did not know he was Jewish until he had made the comment). The challenge was on the basis that the Code did not extend to a situation where a Councillor was ‘off duty’.

In that case, the Judge commented that:

*“It seems to me that unlawful conduct is not necessarily covered. Thus, a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the Code if the offending had nothing to do with his position as a councillor.”*

However, the High Court went on to say that a Councillor might be *“performing his duties” as a Councillor even where he was not acting “in his official capacity”*, suggesting that this would be so where the Councillor was improperly using his position as a Councillor for personal advantage.

This is the approach I take when deciding on conduct outside of the obvious such as on social media.

The judge went on to provide an alternative interpretation where a Councillor says: *“don’t you know who I am” to secure a favourable table at a restaurant is suggesting that he would use his position as a Councillor to penalise the restaurateur if a table were not made available, and so he can then hardly deny that he is acting as a Councillor in making that request.”*

Out of interest, in the Model Codes in Wales and Northern Ireland, you can be caught by the Code in your private life if you do something which brings your office or the council into disrepute.

In Wales, the legislation has spelt out in clear terms what is covered by the Code. It extends unequivocally to conduct in private life in relevant circumstances. Section 52 of the Localism Act 2011 also omits reference to “in performing his duties” in Wales in relation to the undertaking to observe the Code which Members must sign.

#### Case Studies - Social Media

**Stockport Councillor** called someone a sock puppet w\*\*\*\*r on her personal Twitter account, but the context was referring to council business so was caught by the Code  
**Stroud District Councillor** referred to herself as @CllrX on her Twitter account and was caught by the Code. There was no breach for reasons set out below.

#### Case Studies - Don’t you know who I am?

##### Gosport, Hampshire

*“A new mayor and mayoress have been barred from all the pubs in their town following alcohol-fuelled celebrations just hours after they were sworn into their new roles. It is thought an argument broke out when staff asked the boozy party to leave.*

*As they were being removed Ms Carter allegedly threatened to get the pub closed down.*

*The group left and tried to enter the nearby Nelson's Bar but were refused and the mayoress reportedly made a similar threat to bouncers - and even asked '**do you know who I am?**'*

*Stephen Brown, duty manager at Nelson's, said: 'She said to me "do you know who I am?"*

*'I said "no, I don't" and she said "**I'm the mayoress of Gosport I can have you closed down**"*

### **Example - Clydach Town Council**

A Town Councillor trying to negotiate a discount for trophies for the local rugby club said "Don't you know who I am" when the discount was refused. He was suspended for 6 months.

For interest, this was a case from the Public Services Ombudsman Wales Casebook in relation to disrepute which demonstrates that there must be a nexus between the conduct and the official role.

*"Conversely, a complaint was received that Councillor J was intoxicated and behaving inappropriately at a street party. It was established that Councillor J did not have to undertake any action on behalf of the Council at the party. Therefore, in my view, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way the Code did not apply (except for paragraph 6(1)(a)). Whilst her behaviour may have been considered inappropriate by some it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute, so paragraph 6(1)(a) did not apply."*

## **Slides 11 - 13 – Freedom of Expression – Article 10 ECHR**

### Article 10 ECHR

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others..."

When considering in relation to an alleged breach of the Code, the three-stage approach formulated in *Sanders v Kingston* [2005] EWHC 1145 is applied.

- (i) Did the Respondent's conduct breach the Code of Conduct?
- (ii) Would the finding in itself comprise of a prima facie breach of Article 10?

- (iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

### **Code of Conduct Cases on Freedom of Expression**

#### Sanders

The Chief Executive of a local authority in Northern Ireland, Carrickfergus Borough Council, had sent a letter to the Chief Executives of all UK Local Authorities (including the Council) asking for their support in requesting an inquiry into the unexplained deaths of young soldiers in army barracks.

The Council's Chief Executive passed the letter to the Appellant and his response, and subsequent communications caused great offence. The matter attracted widespread and highly unfavourable publicity. On the 16th June 2003 two Peterborough City Councillors lodged formal complaints against the Appellant with the Standards Board, and on the 25th June 2003 he was, by resolution of the Council, removed from his position as Leader. In December 2003 he was expelled from membership of the Conservative Party.

He argued that the actions of the Standards Board interfered with his right to freedom of expression. The judge held that his responses were not political in nature, but an "ill-tempered rant". As such, his comments were not covered by the enhanced protection afforded to political speech. His conduct did breach the Code and whilst on the face of it a finding of breach of the Code was a breach of Article 10, but the interference was justified given the conduct and that this was a statutory regime.

#### Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin) Judge Hickinbottom:

"Strasbourg also recognises that, because they are public servants engaged in politics, who voluntarily enter that arena and have the right and ability to respond to commentators (any response, too, having the advantage of enhanced protection), politicians are subject to 'wider limits of acceptable criticism'. They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens."

"Article 10 protects not only the substance of what is said, but also the form in which it is conveyed". So, in the political context "....a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.....".

"in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false (*R (Woolas) v. Parliamentary Election Court* [2012] EWHC 3169...."

R (Calver) v Public Services Ombudsman for Wales [2012] EWHC 1172 (Admin)

The High Court has ordered that a decision by the Adjudication Panel for Wales and the Public Services Ombudsman for Wales holding that the claimant had breached Manorbier Community Council's Code of Conduct in relation to comments on his personal website, be set aside as it amounted to an interference with his rights under Article 10 of the European Convention on Human Rights (ECHR) (right to freedom of expression).

In this case although the comments directed towards other councillors were found to be "sarcastic and mocking" they were found to amount to "political expression". It is also of interest to note the fact that Beatson J stated that it was necessary to bear in mind "the traditions of robust debate" which may include "some degree of lampooning of those who place themselves in public office" which would necessarily require politicians to have "thicker skins than others".

See further below under – respect.

(R (Robinson) v Buckinghamshire Council and another [2021] EWHC 2014 (Admin)

The High Court (Laing J) has held that a local authority's finding that a parish councillor had breached a Code of Conduct for Members under the Localism Act 2011 was not in accordance with Article 10 of the European Convention on Human Rights (freedom of expression). The councillor had stated that other councillors had misrepresented the council's true intentions regarding future local development on green belt land. The local authority considered that this was disrespectful and risked bringing a parish council into disrepute.

The High Court considered that this finding was an interference with the councillor's right to freedom of expression under Article 10(1). The interference was not, however, justified. The councillor was an elected representative discussing a highly controversial topic, and their statements in a public meeting attracted enhanced protection afforded to political debate under Article 10. The decision was flawed for failing to properly consider the legitimate aims that the local authority could rely on, that the councillor's statements were an expression of opinion which had a reasonable factual basis, and for suggesting that the councillor should only have raised them in private. The court quashed the decision.

The judgment serves as a reminder that local authority members are afforded "enhanced protection" by Article 10 in certain public statements that engage their elected functions.

### Dennehy v Ealing [2013] EWHC 4102 (Admin)

A local authority standards committee was entitled to find that comments posted by a councillor on a blog, about the Indian community in a particular area, had failed to treat others with respect, had brought the office of councillor into disrepute and had amounted to a breach of its code of conduct.

Although the findings and the sanctions imposed constituted a breach of the European Convention on Human Rights 1950 art.10, they were justified under art.10(2).

### **Slide 14 – Respect**

- Respect means politeness and courtesy in behaviour, speech, and in the written word.
- Debate and having different views are all part of a healthy democracy.
- As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner.
- You should not, however, subject individuals, groups of people or organisations to personal attack.
- In your contact with the public, you should treat them politely and courteously.
- Rude and offensive behaviour lowers the public's expectations and confidence in councillors.
- In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.
- This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor officer protocol.

### Case studies- Respect

Calver, R (on the **application** of) v The Adjudication Panel for Wales [2012] EWHC 1172

The Adjudication Panel of Wales upheld a finding of a standards committee about a councillor who was accused of failing to show respect and consideration for others by posting online comments about other councillors and the way in which the Council was run. The member sought judicial review of this decision.

The High Court found that whilst the comments which were posted were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the councillors, the comments were "political expression".

The ruling said no account had been taken of the need for politicians to have "thicker skins". In view of the member's freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was



a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights. The Standards Committee's decision to censure the member was therefore set aside.

**Renfrewshire Councillor, Paul Mack, was disqualified for 17 months** by the Standards Commission in Scotland for misconduct following a Hearing at which he was found to have behaved repeatedly in an unwarranted and offensive manner towards two other councillors, as well as to the Chief Executive and other officers.

The Panel heard that Councillor Mack had made a number of serious and unfounded allegations about the allocation of a council property to the family member of Councillor Devine. The allocation was the subject of a review by the Council's Chief Auditor and then Audit Scotland, who concluded that the Council property was appropriately let and that there was no influence, or opportunity for influence, over the selection process, by any elected member.

Despite this, and without any evidence to the contrary, Councillor Mack had embarked upon a course of conduct in which he made accusations of corruption and cronyism, and of covering up criminal activity, towards Councillor Devine, the Chief Executive and senior council staff. Councillor Mack had further demanded the suspension of senior officers, again without any justification.

(The finding and sanction take into account that the Standards Commission had previously suspended Councillor Mack for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. Despite this, the Panel did not consider there was any evidence that he had made any attempt to moderate his behaviour or consider how it could impact others.)

### **Slide 15 – 16 Bullying, Harassment and Discrimination**

The Best Practice Recommendations (see below) require councils to include definitions of bullying and harassment in their Code.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as: *offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.*"

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to



cause distress or fear in any reasonable person. Unlawful discrimination is where someone is treated unfairly because of a protected characteristic.

Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race, religion or belief
- Sex and sexual orientation

The Equality Act 2010 places specific duties on local authorities, namely the Public Sector Equality Duty.

Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

#### Case Study - Intimidation and bullying

The High Court in the case of Heesom ([2014] EWHC 1504 (Admin)) found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

The alleged incidents occurred over a period of two years. During that time the member had made threatening comments to officers of both junior and senior grades. For example, comments such as, a number of managers of the Council had been dispensed with and "*there were more to go*" and "You won't like the man I'll become if I don't get what I want.... I don't need to *threaten you you're an intelligent woman I know you're listening to me*".

The member was disqualified from office for 2 years and 6 months, he appealed the decision and the matter was referred to the High Court where all but three breaches were upheld and the sanction was reduced to disqualification for 18 months,

#### Example – Public Services Ombudsman Wales Casebook

A member of a town council wrote to a Deputy Minister of the Welsh Assembly Government about an employee ("Mr Smith") of a county council, a letter which was also copied to the Council. In the letter the member questioned Mr Smith's

competence and motivation and he made a number of comments of a disparaging and personal nature about Mr Smith and his associates.

He raised the issue of homosexuality and referred to it as a “*notorious disability*” and that “*homosexuality is only a demon which can be driven out*”.

The member was referred to the Adjudication Panel for Wales. The Panel found that the member had breached the Code in that he had failed to show respect and consideration for others. It also found that by his use of words he had brought the office of member into disrepute.

The member was disqualified for 12 months from being or becoming a member of a local authority.

#### Example – Public Services Ombudsman Wales Casebook

A former Monmouthshire County Councillor was suspended for two months for describing homosexuality as “*unnatural, perverted, immoral and wrong*”. Former Monmouthshire county councillor Graham Down also made a comparison between homosexuality and paedophilia, according to the Adjudication Panel. Mr Down said the comments, sent in emails were “private” but they were sent to the authority’s Chief Executive.

The Adjudication Panel determined the code of conduct had been broken - and suspended Cllr Down for two months.

#### Example – Public Services Ombudsman Wales Casebook

A member of a county council was a member of the Council’s Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room Councillor A said “good candidate, shame he’s black”.

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

### **Slide 17 – Impartiality of Officers**

#### Case Study - Sandwell Borough Council

A former deputy council leader has been found to have breached its code of conduct by trying to cancel parking tickets for family members.

The Sandwell Council misconduct hearing found Mahboob Hussain also broke rules in a sale of public toilets.

It said the councillor “ignored” a £130,000 valuation and instead sold them for £35,000 to a family friend.

The committee, headed by James Goudie QC, found the councillor had breached the code of conduct a total of 12 times.

In his summary after the three-day hearing, Mr Goudie said: "[Mr Hussain] comprised the integrity of other council officers by exercising complete control over the action of the sale of the toilet block.

"The councillor's actions brought the council into disrepute."

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period

### **Slide 18 – 19 Disrepute**

#### Case Studies – Public Services Ombudsman for Wales Casebook

A member of a county borough council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10-year-old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published, she telephoned the councillor who she said was abusive towards her during the call.

In a subsequent e-mail exchange, the councillor told her that she had “failed to take any responsibility for her child allowing him out alone”, that her “ill-educated in the highway code son” was to blame and said, “don’t you dare try and shift your inadequacies as a parent upon me”.

He was suspended for 12 months in respect of these breaches.

#### English Cases

**Air show Slap Councillor** – A standards committee recommended that a councillor who slapped a man outside Clacton Pier at last year's Air show was removed from Committees

**A Bodmin Town councillor** - was censured for alleging that “sadly democracy can be bought”. Councillor Andy Coppin was found guilty of breaching the Code of Conduct for the Council in May after he took to Facebook to comment on the local elections.

The former mayor shared his thoughts in a post on his personal page, saying “sadly democracy can be bought” and “however, I will say that someone tried to influence my vote. I can’t prove it so I won’t say any more...”

The monitoring officer concluded that Cllr Coppin breached the code on the grounds that his conduct could "reasonably be regarded as bringing the office or the council into disrepute"

.....

A former Leader of Swansea Council was banned from becoming a councillor for two-and-a-half years after indecent images were found on his computers. Lawrence Bailey was also found to have breached the Code by writing to a local newspaper using false names.

Three separate computers used by Mr Bailey held indecent images. Council engineers discovered 6,000 adult images on one laptop's hard-drive. It was replaced, but in 2005 several thousand more pornographic items were discovered on the same machine. Another computer used by Mr Bailey was discovered to hold at least 70,000 graphic images, of which half were described as "adult hard-core pornography". The third computer, also a laptop machine, also held indecent pictures.

But the panel also found it contained 253 documents, mostly letters to the Swansea Evening Post.

"Although the police examination showed Mr Bailey as being the author, the documents purported to have originated from various residents of Swansea," stated the report. "In some cases, the addresses did not exist, or the postcodes did not match them, or the true residents had no knowledge of the letters."

In his own submission to the panel, Mr Bailey claimed that writing letters to the press under pseudonyms "was widespread practice in political life in Wales".

Publishing its decision, the adjudication panel accepted that Mr Bailey himself admitted misusing computer equipment supplied by the council and had brought the office of councillor into disrepute.

But banning him from standing as a councillor anywhere in Wales for two-and-a-half years, the panel noted a series of what it described as "aggravating features".

These included the persistent downloading of images over five years, failure to heed advice given on two occasions about his conduct, and the "serious undermining of public confidence" by his actions.

## **Slide 21 – Use of Resources**

### Section 2 Local Government Act 1986

#### **2 Prohibition of political publicity.**

(1) A local authority shall not publish, or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;

(b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

(3) A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves.

#### Code of Recommended Practice on Local Government Publicity

<https://www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity>

#### Case Study Misuse of Council Facilities

The Standards Commission for Scotland suspended Councillor Alexander Duncan of Aberdeenshire Council for breaches of the Councillors' Code of Conduct.

The Hearing Panel heard that Councillor Duncan, as a partner of a firm, submitted a planning application for a wind turbine, which had been considered by the Banff and Buchan Area Committee at a meeting on 16 August 2016 and was due to call again at a meeting on 6 September 2016.

The Hearing Panel found that Councillor Duncan sent two emails from his Council email address, which were signed off by him as a councillor, to seven members of the Committee on 4 August 2016 putting forward some points in favour of the planning application.

The Hearing Panel heard that the planning application was granted at the Committee meeting on 6 September 2016. The Hearing Panel found that Councillor Duncan had acted inappropriately in using his council facilities to send the email of 4 September 2016, having previously been expressly warned not to do so by the Council's Monitoring Officer.

In doing so, the Respondent had contravened the provision in the Code which states that Council facilities should only be used for carrying out Council duties or for incidental personal use authorised by the Council.

The Hearing Panel further found that members of the public would reasonably conclude that, in signing off his emails as a councillor, Councillor Duncan was using his position to seek preferential treatment and, in making representations, outside of the Committee forum and the correct procedure, in favour of the application was also seeking to privately lobby other councillors about the planning application.

“A failure to keep personal interests separate and distinct can result in Council decisions being legally challenged and can erode public confidence and trust in local government and the democratic process itself.” The Hearing Panel suspended Councillor Duncan from all committee and sub-committees of the Council that make decisions on quasi - judicial or regulatory matters (such as planning), for a period of 6 months.

### **Slides 22 – 23 – Gifts and Hospitality**

The former deputy leader of Westminster city council stepped down after it was revealed he had received nearly 900 gifts and hospitality packages over six years

### **Slide 24 – Confidential Information**

(See Sandwell case referred to above)

### **Case Study - Confidential information**

**An Orkney Islands Councillor**, John Ross Scott, was suspended by the Standards Commission Scotland from attending meetings of the full Council for three months.

A Hearing Panel of the Standards Commission found that, in two Facebook posts published in March 2020, Councillor Scott disclosed sensitive information about the Council's response to the coronavirus pandemic. This was despite the information having been provided by officers to elected members at private briefings.

Having heard from a number of witnesses, including other councillors, the Panel was satisfied that it was evident to all that information provided at the briefings was to remain confidential until officers had time to prepare its public communications.

**A Fife Councillor**, Andy Heer, was suspended by the Standards Commission Scotland from attending all meetings of Fife Council, and all meetings of any other body on which he is a representative or nominee of the council, for January and February 2021.

A Hearing Panel of the Standards Commission found that Councillor Heer, who was a Council appointee to the Board of Fife Resource Solutions (FRS) disclosed, firstly, on

a Fife Conservative press release and later, on Facebook, information concerning the reopening of recycling centres following the first lockdown that had been discussed in the papers for, and at, a special meeting of the FRS Board on 20 May 2020.

This was despite knowing the information was to remain confidential until such a time as the Council had agreed to the proposals, that full arrangements for their implementation had been put in place, and for communications to be managed accordingly

### **Slide 26 – 27 Interests**

See - Openness and transparency on personal interests - A guide for councillors  
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>

A person's disclosable pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).

The Governments view was that there should be more focus on what really matters in terms of potential corruption and abuse of position and took the view that less serious issues should be dealt with locally and that sanctions would be applied at the ballot box.

To give this 'teeth', breach of these provisions is a criminal offence (see slide 33)  
Only one prosecution to date and CSPL has recommended abolition of the offence.

Former leader of Dorset County Council found guilty of an offence under the pecuniary provisions of section 31 of the LA 2011 (that is having a disclosable pecuniary interest in a matter considered at a meeting).

On 25 February 2013 he was present at a meeting about the East Dorset Core Strategy and, despite having a disclosable pecuniary interest in a matter that was considered at that meeting and without reasonable excuse, he participated in the vote taken at the meeting.

At that time, he was a non-executive director of a housing charity and although he was not in receipt of a salary, he had received various remuneration payments for the years 2010 to 2013 totaling some £29,920. In accordance with section 30 of the LA 2011, he had listed that interest in pecuniary interest forms submitted to the district council and the County Council in 2012.

The district judge concluded that before the meeting the defendant member should have taken time to consider his position. The LA 2011 was clear that, having declared



his interest as a non-executive director of the housing charity, he could not take part in that meeting. As the district judge pointed out, the defendant member could have done one of two things.

He could have obtained a dispensation from section 31(4) by virtue of section 33 of the LA 2011.

Secondly, it would not have been unreasonable for the defendant member to have consulted with the Monitoring Officer to obtain his advice on the issue, particularly given that the onus is on the local authority member to deal with such matters.

On the evidence, the district judge found that the defendant was prevented by the LA 2011 from taking part in the meeting on the 25 February 2013 and, without a dispensation, he could not take part.

Section 31(4) of the LA 2011 imposed a positive duty on him not to participate and vote. Although there was no evidence before the court, that the defendant member's participation in the meeting resulted in any direct benefit to him, the provisions of the LA 2011 made it clear that he should not have taken part or voted at that meeting.

The district judge indicated that the defendant member had failed to satisfy the court that what he did amounted to a reasonable excuse. He was therefore given a six-month conditional discharge and was ordered to pay £930 in costs (the lowest penalty that the court could impose); he has been allowed to remain an elected member.

Just because you don't have a direct financial interest in matter, the decision could still be set aside on the basis of apparent bias...

#### Kelton v Wiltshire Council [2015] EWHC 2853 (Admin)

The High Court quashed a planning permission decision on the grounds that participation in the decision making by a company director of a housing association gave rise to an appearance of apparent bias.

The claimant challenged the grant of outline planning permission by Wiltshire Council for a scheme of up to 35 custom built residential dwellings, including nine affordable homes. HPH Ltd and HAB Housing were the applicants for planning permission. HPH had entered into discussions with Selwood Housing Association (SW) in 2011, regarding the provision of affordable and custom-built housing as part of a future affordable housing development project, with SW providing free advice to HPH. It was intended that the affordable housing aspect of the development would go out to tender once outline planning permission had been granted.

In June 2014, the planning committee discussed and approved the HAB/HPH application for planning permission. There were however a number of objections to a particular councillor taking part in the decision (Councillor M) on the grounds that he was a director of SW and therefore had an interest in the outcome of the application.

The High Court allowed the judicial review application and quashed the planning permission decision, holding that:

Councillor M did not have a direct pecuniary or proprietary interest in the planning application. The decision to grant HAB and HPH planning permission did not directly lead to Councillor M obtaining any benefit and SW was not a party to the decision in any case.

SW did not have a contract with HPH or HAB which meant that Councillor M would have stood to directly benefit from the grant of planning permission and therefore was not disqualified under section 31 of the Localism Act 2011. It could be said that SW had built up goodwill towards HPH and HAB by giving affordable housing advice to them but at the time permission was granted the affordable housing element of the scheme had not yet gone up for tender.

Councillor M's involvement in the decision to grant planning permission did give rise to an allegation of apparent bias. It was in both SW and Councillor M's interests for the application to be approved and it was clear that a lot of effort had been put into the work with HAB and HPH making SW "the front runner to deliver the affordable housing part of the scheme" who would "barring something unforeseen, be appointed to do so in due course".

This finding would not necessarily preclude Councillor M from participating in future planning committee meetings, it was simply the case that here SW was not just any affordable housing provider but was instead the only provider which had expressed a keen interest in the scheme, had advised those applying for planning permission and had been named by HAB and HPH as a potential partner going forward.

SW was in a superior position compared to other affordable housing providers in relation to the planning permission application which meant that because of apparent bias, Councillor M should not have participated in the meeting.

### **Slide 36 –Participation where you have a DPI**

#### Case Study Cllr Kevin O'Neill Merthyr Tydfil BC

Cllr O'Neill had a personal interest in a matter affecting St David's, Luther Lane, Merthyr Tydfil, a property neighbouring his home which was purchased by a private

organisation with the intention of housing children from troubled backgrounds in a community setting. There had been a lot of opposition to the plans locally and on social media. Councillor O'Neill was present at two meetings to discuss the Luther Lane property on 15th August 2018, the first a pre-meeting with Council staff, the second an inter-agency meeting having been advised not to by the Monitoring Officer.

Cllr O'Neill was suspended for 7 months for six breaches of the Code. The six alleged failures under consideration were as follows.

**Allegation 1** Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15th August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.

**Allegation 2** Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15th August 2018.

**Allegation 3** Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15th August 2018.

**Allegation 4** That the Respondent's email to the Director of Social Services on 16th August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the email sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.

**Allegation 5** Whether the Respondent's actions in speaking at the meeting of the 15th August 2018 and sending written correspondence to an officer in the form of an email to the Director of Social Services on 16th August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.

**Allegation 6** Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5th March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.

## Slide 38 – Personal Interests

Standards Boards – “*Wellbeing*” can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position. The range of personal **interests** is, accordingly, likely to be very broad.’

## Slide 42 – Complaints about members

The Localism Act requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. The Act removed the statutory requirement for local authorities to have a standards committee, found in the previous regime, although authorities are free to set one up.

District Councils carry out the process on behalf of town and parish councils.

If either a complainant, or the councillor against whom a complaint has been made, is unhappy with the way in which the local authority resolves the complaint, there is no higher authority to which they may appeal. Neither the Local Government Ombudsman or the Government investigate complaints in respect of councillors’ conduct or registration of pecuniary interests.

The Ombudsman can investigate a complaint about a local authority’s handling of a complaint about conduct, but it cannot re-investigate the original complaint itself.

## Slide 45 – Relatively Recent Developments

### Recommendations from the Committee on Standards in Public Life

1. The Local Government Association should create an **updated model code of conduct**, in consultation with representative bodies of councillors and officers of all tiers of local government.
2. The government should ensure that candidates standing for or accepting public offices are **not required publicly to disclose their home address**. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority’s register of interests.
3. **Councillors should be presumed to be acting in an official capacity in their public conduct**, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.

4. Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's **code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**
5. The Relevant Authorities (**Disclosable Pecuniary Interests**) Regulations 2012 should be **amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.**
6. Local authorities should be **required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.**
7. Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to **prejudice your consideration or decision-making in relation to that matter**"
8. The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.
9. The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.
10. **A local authority should only be able to suspend a councillor** where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.
11. Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.
12. Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.
13. Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct
14. The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority

15. The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied
16. Local authorities should be given the power to suspend councillors, without allowances, for up to six months
17. The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary
18. The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished
19. Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.
20. Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.
21. Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.
22. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal
23. The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistle blowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website
24. Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998
25. Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules
26. Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

### **Best Practice**

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

**Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.



**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.