

# THE NATIONAL CODE OF LOCAL GOVERNMENT CONDUCT

## ***Preliminary Note***

The text of the National Code is not open to amendment by the Council. Local additions are possible. The Council has added an anti-canvassing supplement which appears at the end of the text of the National Code.

The Code is annexed to Scottish Development Department Circular 11/90. The circular includes a number of paragraphs of immediate relevance.

The Code applies to all members of the authorities and other bodies to which this circular is addressed, including members co-opted to committees, sub-committees and joint committees.

It is important that the new Code is drawn to the attention of all existing members of your authority, and of all new members, as and when they are elected or appointed. Where local authorities provide for copies of their standing orders to be distributed to all members, they should consider including the Code as an annex.

In carrying out an investigation, the local ombudsman may find that a breach of the National Code of Local Government Conduct by any individual member of the authority, constitutes maladministration. Section 32 of the 1989 Act requires that in these circumstances the local ombudsman must name the member or members concerned in his report on the investigation and give particulars of the breach unless he is satisfied that it would be unjust to do so.

The National Code of Local Government Conduct provides, by way of guidance to members of local authorities, recommended standards of conduct in carrying out their duties and in their relationship with the council and the council's officers.

The Code applies to all council members. All councillors are required on accepting office to declare that they will be guided by the Code. The Code also applies to all members of committees, joint committees and sub-committees of these authorities, whether or not they are voting members of those bodies.

The Code represents the standard against which the conduct of members will be judged, both by the public and their fellow councillors. The local ombudsmen may also regard a breach of the Code as incompatible with good administration and may make a finding of maladministration by the council in these circumstances.

## THE CODE

### ***The Law and standing orders***

- 1 Councillors hold office by virtue of the law, and must at all times act within the law. You should make sure that you are familiar with the rules of personal conduct which the law and standing orders require and the guidance contained within this Code. It is your responsibility to make sure that what you do complies with these requirements and this guidance. You should regularly review your personal circumstances with this in mind, particularly when your circumstances change. You should not at any time advocate or encourage anything to the contrary. If in any doubt seek advice from your council's appropriate senior officer or from your own legal adviser. In the end however, the decision and the responsibility are yours.

### ***Public duty and private interest***

- 2 Your over-riding duty as a councillor is to the whole local community.
- 3 You have a special duty to your constituents, including those who did not vote for you.

- 4 Whilst you may be strongly influenced by the views of others, and of your party in particular, it is your responsibility alone to decide what view to take on any question which councillors have to decide.
- 5 If you have a private or personal interest in a question which councillors have to decide, you should never take any part in the decision, except in the special circumstances described below. Where such circumstances do permit you to participate, you should never let your interest influence the decision.
- 6 You should never do anything as a councillor which you could not justify to the public. Your conduct, and what the public believes about your conduct, will affect the reputation of your council and of your party if you belong to one.
- 7 It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.

### ***Disclosure of pecuniary and other interests***

- 8 The law makes specific provision requiring you to disclose both direct and indirect pecuniary interests (including those of a spouse with whom you are living) which you may have in any matter coming before the Council a committee or a sub-committee. It prohibits you from speaking or voting on that matter. Your council's standing orders may also require you to withdraw from the meeting while the matter is discussed. You must also by law declare certain pecuniary interests in the statutory register kept for this purpose. These requirements must be scrupulously observed at all times.
- 9 Interests which are not pecuniary can be just as important. You should not allow the impression to be created that you are, or may be, using your position to promote a private or personal interest, rather than forwarding the general public interest. Private and personal interests include those of your family and friends, as well as those arising through membership of, or association with, clubs, societies and other organisations such as the Freemasons, trade unions and voluntary bodies.
- 10 If you have a private or personal non-pecuniary interest in a matter arising at a local authority meeting you should always disclose it, unless it is insignificant or one which you share with other members of the public generally as a ratepayer, a community charge payer or an inhabitant of the area.
- 11 Where you have declared such a private or personal interest, you should decide whether it is clear and substantial. If it is not, then you may continue to take part in the discussion of the matter and may vote on it. If, however, it is a clear and substantial interest, then you should never take any further part in the proceedings, and should always withdraw from the meeting whilst the matter is being considered.

In deciding whether such an interest is clear and substantial, you should ask yourself whether members of the public, knowing the facts of the situation, would reasonably think that you might be influenced by it. If you think so, you should regard the interest as clear and substantial.

- 12 In the following circumstances, but only in these circumstances, it can still be appropriate to speak, and in some cases to vote, in spite of the fact that you have declared such a clear and substantial private or personal interest:
  - (a) if your interest arises in your capacity as a member of a public body, you may speak and vote on matters concerning that body; for this purpose, a public body is one where, under the law governing declarations of pecuniary interests, membership of the body would not constitute an indirect pecuniary interest;
  - (b) if your interest arises from being appointed by your local authority as their representative on the managing committee, or other governing body, of a charity, voluntary body or other organisation formed for a public purpose (and not for the personal benefit of the members),

you may speak and vote on matters concerning that organisation;

- (c) if your interest arises from being a member of the managing committee, or other governing body of such an organisation, but you were not appointed by your local authority as their representative, then you may speak on matters in which that organisation has an interest; you should not vote on any matter directly affecting the finances or property of that organisation, but you may vote on other matters in which the organisation has an interest;

### ***Dispensations***

- 13 Circumstances may arise where the work of your authority is affected because a number of councillors have personal interests (pecuniary or non-pecuniary) in some question.
- 14 In certain circumstances, you may be able to get a dispensation to speak, and also to vote, in spite of a pecuniary interest. Such dispensations are given under statute by the Secretary of State in the case of county, regional, islands, district and London borough councils, and in England and Wales) by the district council in the case of town, parish and community councils.
- 15 In the case of non-pecuniary interests, there may be similar exceptions to the guidance contained in paragraphs 9 to 12 of this Code. In the circumstances below it may be open to you to decide that the work of the council requires you to continue to take part in a meeting which is discussing a matter in which you have a clear and substantial private or personal interest.
- 16 Before doing so, you should:
  - (a) take advice from the chairman of your local authority (if this is practicable) and from the appropriate senior officer of the authority as to whether the situation justifies such a step;
  - (b) consider whether the public would regard your interest as so closely connected with the matter in question that you could not be expected to put your interest out of your mind (for example, the matter might concern a decision by the council affecting a close relative); if you think that they would, you should never decide to take part in a discussion of, or a vote on, the matter in question and
  - (c) consider any guidance which your council has issued on this matter.
- 17 The circumstances in which (after such consultation and consideration) you may decide to speak and vote on a matter in which you have a clear and substantial private or personal non-pecuniary interest are if but only if:
  - (a) at least half the council or committee would otherwise be required to withdraw from consideration of the business because they have a personal interest; or
  - (b) your withdrawal, together with that of any other members of the council or committee who may also be required to withdraw from consideration of the business because of a personal interest, would upset the elected party balance of the council or committee to such an extent that the decision is likely to be affected.
- 18 If you decide that you should speak or vote, notwithstanding a clear and substantial personal or private non-pecuniary interest, you should say at the meeting, before the matter is considered, that you have taken such a decision, and why.
- 19 The guidance set out in paragraphs 15-18 above also applies to sub-committees. However if the sub-committee is very small, or if a large proportion of members declare a personal interest, it will usually be more appropriate for the matter to be referred to the parent committee.

### ***Disclosure in other dealings***

- 20 You should always apply the principles about the disclosure of interests to your dealings with council officers, and to your unofficial relations with other councillors (at party group meetings, or other informal occasions) no less scrupulously than at formal meetings of the council, committees and sub-committees.

### ***Membership of committees and sub-committees***

- 21 You, or some firm or body with which you are personally connected, may have professional, business or other personal interests within the area for which the council are responsible. Such interests may be substantial and closely related to the work of one or more of the council's committees or sub-committees. For example, the firm or body may be concerned with planning, developing land, council housing, personnel matters or the letting of contracts for supplies, services or works. You should not seek, or accept, membership of any such committee or sub-committee if that would involve you in disclosing an interest so often that you could be of little value to the committee or sub-committee, or if it would be likely to weaken public confidence in the duty of the committee or sub-committee to work solely in the general public interest.

### ***Leadership and Chairmanship***

- 22 You should not seek, or accept, the leadership of the council if you, or any body with which you are associated, has a substantial financial interest in, or is closely related to, the business or affairs of the council. Likewise, you should not accept the chairmanship of a committee or sub-committee if you have a similar interest in the business of the committee or sub-committee.

### ***Councillors and officers***

- 23 Both councillors and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees.
- 24 Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers.
- 25 The law and standing orders lay down rules for the appointment, discipline and dismissal of staff. You must ensure that you observe these rules scrupulously at all times. Special rules apply to the appointment of assistants to political groups. In all other circumstances, if you are called upon to take part in appointing an officer, the only question you should consider is which candidate would best serve the whole council. You should not let your political or personal preferences influence your judgement. You should not canvass the support of colleagues for any candidate and you should resist any attempt by others to canvass yours.

### ***Use of confidential and private information***

- 26 As a councillor or a committee or sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else.

### ***Gifts and hospitality***

- 27 You should treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organisation making the offer may be doing, or seeking to do, business with the council, or may be applying to the council for planning permission or some other kind of decision.
- 28 There are no hard or fast rules about the acceptance or refusal of hospitality or tokens of goodwill. For example, working lunches may be a proper way of doing business, provided that they are approved by the local authority and that no extravagance is involved. Likewise, it may

be reasonable for a member to represent the council at a social function or event organised by outside persons or bodies.

- 29 You are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government. The offer or receipt of gifts or invitations should always be reported to the appropriate senior officer of the council. The reference in this paragraph to standing orders and to the rules on the appointment of assistants to political groups only apply after the making of regulations under sections 8 and 9 of the Local Government and Housing Act 1989.

#### ***Expenses and allowances***

- 30 There are rules enabling you to claim expenses and allowances in connection with your duties as a councillor or a committee or sub-committee member these rules must be scrupulously observed.

#### ***Dealings with the council***

- 31 You may have dealings with the council on a personal level, for instance as a ratepayer or community charge-payer, as a tenant, or as an applicant for a grant or a planning permission. You should never seek or accept preferential treatment in those dealings because of your position as a councillor or a committee or sub-committee member. You should also avoid placing yourself in a position that could lead the public to think that you are receiving preferential treatment: for instance, by being in substantial arrears to the council, or by using your position to discuss a planning application personally with officers when other members of the public would not have the opportunity to do so. Likewise, you should never use your position as a councillor or a committee or sub-committee member to seek preferential treatment for friends or relatives or any firm or body with which you are personally connected.

#### ***Use of council facilities***

- 32 You should always make sure that any facilities (such as transport, stationery, or secretarial services) provided by the Council for your use in your duties as a councillor or a committee or sub-committee member are used strictly for those duties and for no other purpose.

#### ***Appointments to other bodies***

- 33 You may be appointed or nominated by your council as a member of another body or organisation - for instance, to a joint authority or a voluntary organisation. You should always observe this Code in carrying out your duties on that body in the same way you would with your own authority.

## **LOCAL SUPPLEMENT TO CODE OF CONDUCT FOR MEMBERS**

### ***Contracts, Planning Applications etc: Canvassing***

- 1 If you are canvassed by any member of the public who requests, directly or indirectly, your aid in securing a business contract with the Council or in the determination of a planning or other application you shall, subject to the qualification contained in the following paragraph, report such canvassing to the Director of Corporate Services, who shall investigate and, where appropriate, report on such canvassing to the Council.
- 2 Subject to paragraph 6 below in relation to contracts, a passing comment by a member of the public on a matter of public interest should not necessarily be construed as canvassing; in assessing whether an approach merits reporting the matter to the Director of Corporate Services, you should consider the circumstances of the approach and whether the approach appears to be made from a narrow vested interest or whether it can justly be described as being

in the wider public interest.

### ***Contracts – Conduct***

- 3 It is essential that the tender documents clearly advise prospective tenderers of the need to complete all documentation and of the consequences of disqualification resulting from a failure to complete any part of the tender document.
- 4 Notwithstanding the previous paragraph, the Council should continue to follow good practice by adjusting tender prices where there is an obvious arithmetical error.
- 5 Tender documents should clearly state that any attempt by tenderers to communicate directly or indirectly with elected members or officials concerning the contract prior to the award of the contract by the Council will result in automatic disqualification of their tender.
- 6 Elected members and officials must report to the Director of Corporate Services any communication, however informal, about a contract which is the subject of tender and the Director of Corporate Services should decide whether that contact, direct or indirect, should result in the disqualification of a tender and delegated powers are extended accordingly.
- 7 Unless specifically authorised in writing by the Director of Corporate Services or his Depute, the official responsible for keeping the register must ensure that information from it is not provided to anyone during the evaluation process prior to the award of the contract and should be advised that any breach of this responsibility may be treated as gross misconduct.
- 8 Elected members and officials must refrain from speaking about the tenders with the official responsible for the evaluation of tenders or any of his staff prior to the availability of any report for the consideration of elected members.
- 9 Even after the report is available for consideration by elected members, elected members should only seek an explanation of matters within the Report which are not clear to them.

(Paragraphs 3-9 above added by Council on 13 May 1997 on advice of Mr Andrew Hardie Q.C. All paragraphs included here and also repeated as standing instruction as appendix to Contract Regulations)

### ***Appointments - Canvassing of members of the Comhairle or senior officers and officials***

- 10 Canvassing of Members, non-Members of the Comhairle who may be involved in making an appointment or senior officers of the Comhairle directly or indirectly in connection with any appointment under the Comhairle, shall disqualify the candidate.

## **SEVEN PRINCIPLES OF PUBLIC LIFE**

The following principles of public life have been adopted by the Comhairle to be applied in the conduct of its business:

### 1 Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

### 2 Integrity

Holders of public office should not place themselves under any financial or other obligation to

outside individuals or organisations that might influence them in the performance of their official duties.

3 Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

4 Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

5 Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

6 Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

7 Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life.

The principles apply to all Members and Officers who serve the public in any way.