

Code of Conduct

Training presentation notes

Slide 1

No notes

Slide 2 - Introduction

A copy of the revised Code, the Local Authorities (Model Code of Conduct) Order 2007 No.1159, is published in various forms on the Stationery Office website at www.opsi.gov.uk and is also available on Standards for England's website – Standards for England's website also includes a copy of the Model Code that contains the mandatory provisions for parish and town councils.

Slide 3 – General obligations

Treating others with respect - paragraph 3(1)

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This should particularly apply when dealing with the public and employees. Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration.

Complying with equality and discrimination laws – paragraph 3(2)(a)

Although members should be able to express opinions, they must be careful not to behave in a way which may cause their authority to breach equality laws. This includes discriminating against other people on the grounds of race, gender, disability, sexual orientation, religion and age.

Bullying - paragraphs 3(2)(b)

Members must not bully any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a

weaker person or person whom the member has some actual or perceived influence over.

This can be contrasted with the legitimate challenges which a member can make in challenging policy or scrutinising performance. It is important that members raise issues about poor performance in an appropriate way and in the proper forum.

Intimidation – 3(2)(c)

Members must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code.

Compromising the impartiality of officers of the authority – paragraph 3(2)(d)

Members should not approach or pressure anyone who works for, or on behalf of, the authority to carry out their duties in a biased or partisan way. For example, members should not get officers to help them with matters relating to their private business.

Slide 4 – General obligations

Preventing access to information – paragraph 4(b)

Members must not prevent anyone getting information that they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of the authority which the person has a right of access to.

Member using their position improperly – paragraph 6(a)

A member must not use, or attempt to use, their official position improperly to the advantage or disadvantage of themselves or anyone else.

Using resources for proper purposes only – paragraphs 6 (b), 6(b)(ii) and 6(c)

Members must, when using or authorising the use by others of resources of the authority, act in accordance with their authority's reasonable requirements and make sure they use their authority's resources for proper purposes only.

Members must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Considering advice provided and giving reasons – paragraph 7

Members must have regard to advice from their monitoring officer or chief finance officer where they give it under their statutory duties – in relation to the Code of Conduct this only covers advice on maintaining the register of members' interests not general advice about interpreting the Code of Conduct. Members must give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by their authority.

This paragraph is not mandatory for parish councils but a parish council may choose to include an obligation to take account of the clerk's advice in the Code they adopt.

Slide 5 – Confidential information

When a member is considering whether to disclose confidential information they need to ask themselves 'why is this confidential?' Members should also raise their concerns through appropriate channels and seek advice before disclosing the information. Members should also refresh their understanding of their authority's policies or protocols regarding whistleblowing and freedom of information.

When members are deciding whether the disclosure is reasonable and in the public interest, they 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.

Disclosure 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 the authority

In certain 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.

Slide 6 – Personal interests

A member has a personal interest in a matter being discussed at an authority meeting where the matter:

- relates to an interest they must register
- affects the well-being or financial position of them, members of their family or their close associates, *more than it would affect the majority of people in the ward / parish affected by the decision*

Members must declare their personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to the member, except in limited circumstances. Even if their interest is on the register of interests, members must declare it in the meetings where matters relating to that interest are discussed, unless an exemption applies.

Members do not have a personal interest where it is merely something they share with people in the ward or parish affected by the decision.

Slides 7 and 8 - Exemption to the rule on declaring personal interests

An example of where the exemption may apply is if a member is attending a council debate on education policy and is also a local education authority appointed governor, they would only need to declare an interest if they decided to speak during the debate. If the member does not want to speak then they do not need to declare an interest. However, they may still vote without making a declaration.

Slides 9 and 10 – Prejudicial interests

A personal interest will be a prejudicial interest if all of the following conditions are met:

- a) The matter affects the financial position of any relevant person or body through whom the member has a personal interest **AND / OR** the matter relates to an approval, consent, licence, permission or registration that is brought by the member or any relevant person or body through whom the member has a personal interest.

- b) The matter does **NOT** fall within one of the exempt categories listed under paragraph 10(2)(c) – these categories include member allowances, indemnities for members and the setting of council tax
- c) Subject to the points above, a member of the public who knows the relevant facts would reasonably think the personal interest is so significant that it is likely to prejudice the member's judgement of the public interest.

The Code is clear that a member can only have a prejudicial interest if the tests for having a personal interest as described in slides 6 -8 are met **and** the matter meets all the conditions set out in slides 9-10. If not, the member does not have a prejudicial interest.

For further information on personal and prejudicial interests please see Standards for England's guidance.

Slide 11 – Prejudicial interests and para 12(2)

If a member has a prejudicial interest in a matter being discussed at a meeting, the member must declare the existence and nature of that prejudicial interest at the beginning of the meeting or item, or as soon as the interest becomes apparent to the member.

The member should then leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights will usually be governed by the authority's constitution, procedural rules or standing orders and may be subject to conditions including time limits or the fact that representations can only be made in writing. *Please see Standards for England's guidance for further information.*

Members must immediately leave the room once they have finished speaking or when the meeting decides that they have finished (if that is earlier). The member cannot remain in the public gallery to observe the vote.

In addition, members must not seek to improperly influence a decision in which they have a prejudicial interest.

Slide 12 and 13 - What can a member do/not do when they have a prejudicial interest?

As stated on the last slide, if members have a prejudicial interest in a matter they must immediately leave the room once they have finished speaking or when the meeting decides that they have finished (if that is earlier). The member cannot remain in the public gallery to observe the vote.

If a member decides to make a written representation on the matter they have a prejudicial interest in, such as a planning application, they should disclose the existence and nature of that interest in the representation and not seek preferential consideration for the representation.

Slide 14 - Parish Councils and para 12(2) – optional slide

As mentioned earlier, paragraph 12(2) gives members with a prejudicial interest in a matter the same rights as members of the public to speak to a meeting on the matter, and then leave before the main discussion and vote.

Paragraph 12(2) is not mandatory for parish and town councils, English and Welsh police authorities, the Greater London Authority, national park authorities, and fire and rescue authorities. Therefore, if these types of authorities wish to adopt paragraph 12(2), they will need to do so expressly.

If the council wishes paragraph 12(2) to apply, it will need to pass a resolution adopting the Model Code of Conduct including paragraph 12(2) or, if the authority is a parish or town council, adopt Standards For England's 'Model Code for Parish and Town Councils'. It is not enough to adopt, for example, "the Code as applicable to parish councils", as paragraph 12(2) is not mandatory for parishes and they must therefore expressly 'opt-in' for it to have effect.

If paragraph 12(2) is included in an authority's code, Standards for England recommends that, in order to provide clarity, standing orders or procedural rules should be in place which clearly set out the circumstances whereby members of the public can attend meetings of the authority for the purpose of making representations, giving evidence or answering questions. If an authority does not provide members of the public with any right to speak, paragraph 12(2) will have no effect at the authority. This means that members with a prejudicial interest would have to continue to leave the meeting after declaring the nature and extent of their interest.

Slide 15 - Gifts and hospitality

Members must register any gifts or hospitality worth £25 or over that they receive in connection with their official duties as a member, and the source of the gift or hospitality.

Members must register the gift of hospitality and its source within 28 days of receiving it.

Like other interests in the register of interests, a member automatically has a personal interest in a matter if it is likely to affect a person who gave them a gift or hospitality that is registered. The member must then consider whether the personal interest is a prejudicial interest.

Once three years have passed since the member registered the gift or hospitality, the member's obligation to disclose that interest to any relevant meeting ceases.

Slide 16 – Resources on the revised Code

No notes

Further Information

More information can be found in the *Guidance* section of the Standards for England website.

<http://www.standardsforengland.gov.uk/Guidance/>