

Member Training on Member Conduct

A. CONTEXT AND TRAINING CONTENT

The purpose of this training module is to provide elected members with a full understanding of the principles and rules which govern member conduct. In particular members will receive guidance on

- the new Code of Conduct in force from 20th July 2007
- additional common law principles which should be adhered to
- the process for enforcing breaches of the Code
- the role of Standards Committee and of the Monitoring Officer
- the role of the Standards Board for England

On completion of the training members should be fully aware of their obligations and responsibilities.

They should be able to understand how to apply the Code in practice and should know how to get advice when they are in doubt.

B. THE 10 PRINCIPLES OF PUBLIC LIFE

These are not a formal or enforceable part of the Code of Conduct. The Code has in a preamble a set of 10 principles which summarise the rules of the Code. Members should be familiar with the 10 principles as they will assist in understanding what the Code seeks to achieve.

The 10 principles

1. Selflessness – serving only the public interest and not seeking or giving personal advantage
2. Honesty and integrity – always behaving properly and giving the appearance of so doing
3. Objectivity – making decisions on merit
4. Accountability – being accountable to the public for their actions and decisions and co-operating with scrutiny
5. Openness – being transparent and giving reasons for decisions and actions
6. Personal judgement – taking account of the views of others but reaching a decision through independent judgement of the issues
7. Respect for others – promoting equality by not discriminating against any person and respecting the impartiality of officers
8. Duty to uphold the law – acting in accordance with the rule of law at all times
9. Stewardship – ensuring the proper use of the authority's resources
10. Leadership – leading by example and ensuring public confidence in public service

C. WHEN THE CODE OF CONDUCT APPLIES

Most of the Code will apply only when a member is acting on council business or in their official capacity. This will include any occasion when the member is representing the authority or is claiming or giving the impression of so doing (e.g. a public meeting or a ward surgery)

There are 3 instances when the conduct of a member in even when not on council business may lead to a breach of the Code. This will only happen when the behaviour also constitutes a criminal offence of which the member has been convicted.

The three types of conduct are:

1. Conduct which brings the office or authority into disrepute
2. Acting so as to secure an improper advantage or disadvantage for yourself or another person
3. Doing anything to intimidate witnesses, complainants or others involved in an investigation under the Code.

(N.B. this provision will take effect on the implementation of the current Local Government Bill)

The Code will also apply when a member is sitting on another public body but if that body has its own Code of Conduct their Code applies. If it has none the County Council's Code will apply.

QUESTIONS at end of sections A-C

Q1. True or false – The Code of Conduct contains all of the rules governing the conduct of elected members

Answer: False – There are additional common law principles such as bias and predetermination which will be covered later in this training. The Code sets out only those rules which are enforced by the Standards Committee and the Standards Board for England.

Q2. True or false – The 10 principles of public life are not enforced by the Standards Board for England.

Answer: True – but the principles should guide good conduct and a breach of one of the specific duties in the Code is likely also to mean the member has failed to abide by one of the 10 principles.

Q3. True or false. Provided I am not doing anything criminal the Code will only apply when I am on official business.

Answer: False – the Code will also apply if you claim to be or give the impression of acting officially.

Q4. What are the 3 duties on the Code which are breached even when not on council business provided it also amounts to criminal activity?

1. *Intimidating complainants and witnesses (correct)*
2. *Bringing the authority or your office into disrepute (correct)*

3. *Bullying officers (incorrect)*
4. *Securing an improper advantage or disadvantage (correct)*

D. SPECIFIC DUTIES UNDER THE CODE

There are 6 duties which impose obligations on members. The breach of any of these obligations may lead to a complaint. Those duties are:

1. Not to show disrespect
2. To retain the confidentiality of information
3. Not to bring the office or the authority into disrepute
4. Not to use your position to gain an advantage or disadvantage
5. To ensure the authority's resources are used lawfully
6. To consider the advice of the statutory officers

1. Respect

There are 4 elements to this duty.

- You must not do anything which may cause your authority to breach any of the equality laws
- You must not bully any person
- You must not intimidate or attempt to intimidate any complainant, witness or person involved in an investigation about any member's possible breach of the Code.
- You must not do anything to compromise the impartiality of officers

This duty will include avoiding criticism which becomes personal, threatening or provocative.

The Council's equality obligations are to avoid discrimination on grounds of sex, race, religion or belief, age, disability or sexual orientation.

Discrimination can include causing harassment or demonstrating conduct which degrades, is hostile or shows that certain people are treated differently as a result of their compliance with anti-discrimination laws.

Breach may depend on the degree of influence you have over another person and may include insulting, intimidating or humiliating conduct which affects someone's confidence or health.

2. Confidentiality

As a member you will have access to a great deal of information which is confidential either because it is personal information or because it is commercially sensitive or information which would not otherwise get into the public arena.

The Freedom of Information Act means that most information held by a local authority must be disclosed on request.

Most personal information about individuals cannot be disclosed.

There are 4 instances when information which is otherwise confidential can be disclosed by a member:

1. You have the consent of the owner or subject of the information
2. You are legally obliged to disclose it
3. You are disclosing it to obtain legal or professional advice
4. Where it is in the public interest and it is otherwise reasonable, in good faith and meets the Council's reasonable requirements.

The **public interest test** is one for the member but a member may take advice. Will disclosure be of service to the public good? For example it will be in the public interest to disclose information which discloses breaches of the law or rules on health & safety or environmental protection provided this would not compromise any current investigation or breach rules of personal confidentiality.

It will be **reasonable** to do so if you are not placing any other person at risk of harm and you are not doing so to gain personal reward.

You should be acting **in good faith** if you are not disclosing for personal motives.

The Council will have published rules on Data Protection and Freedom of Information and you should seek advice on the application of those if you are in doubt. There may be additional requirements about taking legal advice before disclosing.

3. Disrepute

As a member you must not conduct yourself in any manner which could reasonably be regarded as bringing your office or the authority into disrepute.

It is an objective test – would the reasonable person consider your actions could bring your office into disrepute. It is not necessary for there to be evidence that this has happened.

4. Impropriety

You must not use or attempt to use your position as a member to confer on yourself or others any advantage or disadvantage.

5. Use of Resources

Whenever you use the authority's resources you must do so in accordance with the authority's rules and ensure they are not used improperly or for political purposes.

QUESTIONS at end of section D

Q5: True or false. Showing respect means I cannot criticise officers or show anger over bad service.

Answer: False – but your criticism must not become personal or cross the boundary of orderly conduct.

Q6: True or false. If the Council gets taken to a tribunal for discriminating against someone I cannot be held personally responsible.

Answer: False – You will have a personal duty as a member to avoid any act of yours which may lead to a claim of discrimination against the authority. You should ensure you are familiar with the County Council's policy on equalities.

Q7: True or false. I can disclose any information I receive in my capacity as a member provided I am satisfied it is in the public interest.

Answer: False – it is also necessary to show that you are doing so reasonably, in good faith and in accordance with the authority's requirements.

Q8: I can use Council resources for the following purposes:

- i) Campaigning in preparation for council elections (answer: no)*
- ii) Corresponding with constituents about county matters (answer: yes)*
- iii) Helping to manage surgeries in my division (answer: yes)*
- iv) Pursuing my planning application (answer: no)*

E. PERSONAL INTERESTS

Each member must register all interests defined as personal within the Code. Those include:

- The membership of any body which carries out a public or charitable or public policy function
- Your employment or business
- Any shareholding over £25,000 or 1/100 of value
- Membership of or interest in a company with an interest in land in the area or contracting with the authority
- Any land held by you in the area
- Sources of political funding
- Any gift or hospitality received by you as a member valued at more than £25

These matters must be recorded in the register of interests which is a public document and must also be declared at meetings.

When is any other matter a personal interest?

Any interest in a matter which affects the wellbeing or financial interests of you, your family or anyone with whom you have a close

association provided that interest is greater than the majority of other inhabitants in your ward.

What must I do then?

- If any of the business of the council gives rise to such an interest you must declare it as soon as you become aware
- You need to declare any interest even if it is on the register
- If you acquire a new interest you must register it within 28 days.
- You must declare when you are aware or ought reasonably to be aware of the interest.

You need only declare a gift or receipt of hospitality if it was received in the last 3 years

But

You need only declare at any meeting your interest as a member of another public body if you intend to speak about the matter

Wellbeing will include anything which affects someone for good or ill
A **family** member will include anyone related by blood, marriage or equivalent "common law" relationship

Close association can include favourable or unfavourable connections

F PREJUDICIAL INTERESTS

A personal interest becomes a prejudicial interest when:

1. It is not exempt
2. It affects your financial position or that of a family or relevant other or it relates to licensing or regulatory matters (including planning), and
3. A member of the public with knowledge of the facts would reasonably regard it as so significant as likely to prejudice your judgement of the public interest

The exemptions include:

1. The school your child attends
2. Receipt of member allowances
3. Receipt of state benefits
4. use of school transport

The **relevant others** include your family, close associates and organisations and persons identified in the register of your interests

What do I do?

If a prejudicial interest arises you must leave the meeting and must play no part and must have no influence over the business of the meeting.

But

You may still exercise a right to remain, speak and answer questions but only if the meeting would give such rights to members of the public and the other members agree. You must still leave after speaking.

You may otherwise only make representations to any meeting of the Council through written representations or through professional

representations and you would need to rely on another member to represent the interests of your constituents.

Dispensations

The Standards Committee may consider applications for dispensation from the rules on prejudicial interests if more than half the members would be prevented from participating.

Scrutiny Committees

A decision will amount to a prejudicial interest if being considered by a Scrutiny Committee and it was one taken by an arm of the executive or a committee of which you were a member and you were present when the decision was taken.

Questions on Sections E and F

Q9. True or false: I cannot breach the rule on personal interests if a member of my family has a financial or contractual interest in the county and I am not aware of it.

Answer: False – you will need to show that you could not reasonably have been expected to know about it.

Q10. My County local committee is considering a grant to a local charity my spouse works for. I do not intend to speak at the meeting so I do not need to declare the interest?

Answer: False – this is probably a prejudicial interest and you will need to be absent for the discussion and decision unless the public can also speak.

Q11. I am a member of the committee which is scrutinising a decision about a large development in my ward. I do not need to leave the room.

Answer: True – this is neither a prejudicial nor a personal interest.

Q12. The school of which I am a governor is making a planning application and I am a member of the committee. I can still speak at the meeting.

Answer: True – but only if a member of the public can and the committee agrees. As a regulatory matter this will be a prejudicial interest and your governorship makes it personal to you. You must leave after speaking.

G INVESTIGATION AND SANCTION

Allegations of breaches of the Code will be referred to the authority's Standards Committee. (n.b. This will be the case on the implementation of the current proposals in the Local Government Bill)

The Committee will consider whether a matter warrants investigation.

The Committee will consider whether a matter is serious or significant enough to be referred on to the Standards Board for England (SBE).

The monitoring officer will allocate a person to carry out an investigation and bring a report back to the Standards Committee.

The Committee may appoint a panel to hear the matter and consider imposing a sanction.

A matter should be referred to the SBE when it is felt that, if proven, the matter is likely to warrant a sanction only available to the Adjudication Panel appointed by the SBE.

Sanctions available locally are:

- Censure
- An apology
- Direction for training
- Mediation
- Suspension for up to 3 months

Additional sanctions available to the Adjudication Panel:

- Suspension or partial suspension for up to 1 year
- Disqualification for up to 5 years

H. COMMON LAW RULES ON MEMBER CONDUCT

These principles fall outside the Code of Conduct and are not enforceable personally against members, but anyone affected can take legal action against the Council if a member has behaved in a way which renders the decision of the Council unreliable or capable of being overturned.

Bias

Bias will arise if it can be shown that as a member you have something to gain from the matter, have shown discrimination against individuals concerned or have been involved in the matter earlier such as by taking a decision which you are now responsible for reviewing or scrutinising. In principle someone would be able to say you have a conflict of interest by looking at the matter.

Predetermination

A decision can be judged to be unlawful or irrational if a member involved can be shown to have come to the meeting with a closed mind. This will happen if, in public, you adopt and express a firm position on a matter you will be involved in a decision about, which leaves no room for the consideration of additional evidence or advice when taking the decision.

It is possible to express firm views and opinions provided you also say and show that you would always be open to hear arguments which may enable you to reach a different conclusion.

Rule against Fettering Discretion

If you are responsible for taking any particular decision you should not limit your freedom to take that decision by publicising a firm policy stance or setting down rules which do not accommodate the application of reasonable additional considerations.

Never say that you will never do something.

Always leave open the option of considering professional advice.

ADVICE

Although members are personally responsible for abiding by the Code members can seek advice about any of these rules.

Advice to members is available from the County Council's Monitoring Officer – the County Secretary

From the Deputy Monitoring Officer – the Head of Legal Services

From officers in the Democratic Services Section of the County Secretary's Group

FINAL QUESTIONS -SO WHAT IS NEW ABOUT THE CODE?

Q.13 Please tick the following if you consider they are new to this version of the Code of Conduct

- 1. I no longer have a duty to complain if I think another member has breached the Code (Answer: correct).*
- 2. I now have to ensure I do not discriminate against anyone on grounds of sex or age, etc (Answer: no this is not new, but the wording is now more strict you will need to be familiar with the council's rules on equality).*
- 3. They have changed the definition of friend. (Answer: correct. The phrase is now "a person with a close association").*
- 4. I no longer need to declare a personal interest as a member of another public body. (Answer: No what is new is that you only need to declare if you intend to speak).*
- 5. The definition of personal interest has been relaxed (Answer: correct. You must compare your interest with the majority of your division rather than the majority of the whole area).*
- 6. There is less restriction on speaking when I have a prejudicial interest. (Answer: correct. You may be able to speak on a matter if a member of the public has the same right).*
- 7. I can now disclose confidential information. (Answer No – not new but you have more freedom to disclose material if it is in the public interest).*
- 8. I must register gifts and hospitality valued over £25(correct)*

Q.14 What was all that about common law rules?

I only have to worry about breaching the Code of Conduct because the common law things don't make me personally liable. (False -- you will need carefully to consider advice you receive about bias and having a closed mind as these issues place the authority at risk of challenge)

END --THANK YOU