



The Northern Ireland Local Government Code of Conduct for Councillors

Guidance for Councillors from the Northern
Ireland Commissioner for Complaints

A Statement from the Commissioner for Complaints

The Northern Ireland Local Government Code of Conduct for Councillors (the Code) provides a new ethical standards framework for councillors. The introduction of this first mandatory code of conduct for councillors is just one of a number of fundamental changes to local government in Northern Ireland. The additional functions and powers that have come to the new councils will present challenges and opportunities for you all. This is an important and exciting time for everyone involved in local government.

In order to meet the challenges presented by the new ethical standards framework, it will be important for all of us who have a part to play in making these new arrangements work, to develop a comprehensive understanding of the requirements of the Code. This guidance, which is the first I have issued under section 54 of the Local Government Act (Northern Ireland) 2014, will assist you in developing your understanding of the Code and the obligations it places on you.

As a councillor, when you sign your declaration of acceptance of office, you are affirming that you will observe the Code. In complying with the Code, you are demonstrating that you understand its requirements and that you intend to meet the high standards of behaviour that the public you serve expects from its elected representatives. Poor conduct that breaches the Code undermines the critical trust between the public and the people they elect. This relationship of trust is essential if public confidence in local government and in the democratic process itself is to be maintained.

This guidance includes:

- background to the Code and an overview of the role of my Office in the assessment, investigation and adjudication of complaints (Part 1);
- guidance on when the Code applies (Part 2);
- your obligations in relation to the twelve principles of conduct (Part 3);
- further information about your obligations in relation to the more detailed rules of conduct (Part 4); and
- guidance on the application of the Code in relation to planning matters (Part 5).

Examples are used throughout this guidance to help demonstrate how the Code may apply to you in practice. Since there are not yet any decisions on alleged breaches of the Code, it has been necessary to draw on the experience from Scotland and Wales, where statutory codes of conduct for councillors have been in place for a number of years. Some of the examples included therefore relate to functions, such as housing, that are not undertaken by councils in Northern Ireland. However, I believe these cases offer important insights into how a councillor's conduct might constitute a breach of the Code. It is my intention in future, as a body of decisions develops in Northern Ireland, to provide local examples that will support this guidance.

The examples I have included, therefore, are for illustrative purposes only. These examples should not be regarded as offering an indication of how I will view similar conduct should I be required to adjudicate on a comparable complaint in Northern Ireland. My adjudication of a complaint will be based on my consideration of all the facts of that particular case.

This guidance has been the subject of consultation with councillors and other stakeholders to ensure its relevance. However, I recognise that it is not possible for guidance to cover every conceivable circumstance. I intend therefore to keep it under review. There are, however, some steps that you can take to assist you in developing your understanding of the requirements of the Code. For example, as a councillor, you may be offered training on the Code; I would encourage you to take advantage of such opportunities. Also, if you require further guidance about any of the provisions of the Code, or how the Code applies to you, you should seek advice from an appropriate person within your council or your legal adviser.

Ultimately, it is your personal responsibility to ensure that you are familiar with, and understand, your obligations under the Code, and that you act in a way that ensures those obligations are met.

A handwritten signature in black ink, appearing to read 'Tom Frawley', written in a cursive style.

Dr Tom Frawley CBE
Northern Ireland Commissioner for Complaints

20 March 2015

Acknowledgement

This guidance draws on guidelines issued by the Public Services Ombudsman for Wales, the Standards Commission for Scotland, the (former) Standards Board for England and the Standards in Public Office Commission for Ireland.

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Part 1: Introduction

Background to the Northern Ireland local government ethical standards framework

- 1.1 The Local Government Act (Northern Ireland) 2014 (the 2014 Act) introduced a new ethical standards framework for local government in Northern Ireland. This framework is based on the Northern Ireland Local Government Code of Conduct for Councillors (the Code), which was issued by the Department of the Environment (the Department) and which specifies the conduct expected of councillors. The 2014 Act requires councillors to observe the Code and it gives me, in my role as the Northern Ireland Commissioner for Complaints (the Commissioner), responsibility for investigating and adjudicating on complaints about alleged breaches of the Code.
- 1.2 The Code was approved by the Northern Ireland Assembly on 27 May 2014. Parts 1 to 8 of the Code came into effect immediately. Part 9 of the Code ('Application of the Code in relation to planning matters') will come into force on 1 April 2015.

The role of the Commissioner

- 1.3 The 2014 Act gives me, as Commissioner, the authority to investigate and, where appropriate, to adjudicate on **written** allegations that a councillor has, or may have, failed to comply with the Code. The 2014 Act provides for **any person** to make such a written allegation to me. There is therefore no restriction on who can complain about a councillor's conduct, nor is there any requirement for a complaint to be made to the relevant council in the first instance. I also have the authority to investigate cases where I consider that a councillor has, or may have, failed to comply with the Code, and which have come to my attention in the course of investigating a written complaint.
- 1.4 Although the 2014 Act gives me the authority to both investigate and adjudicate on alleged breaches of the Code, I have delegated the authority to investigate complaints to the Deputy Commissioner and the Local Government Ethical Standards (LGES) Directorate within my Office. The LGES Directorate is responsible for receiving, assessing and investigating a complaint. I undertake the adjudication function and, therefore, I have no role in the receipt, assessment or investigation of a complaint.
- 1.5 The following paragraphs explain what you can expect, in terms of the assessment, investigation and adjudication processes, should you be the subject of a complaint that you have, or may have, breached the Code.

Assessment of complaints

- 1.6 The LGES Directorate is not required to investigate every complaint it receives. Complaints that are not made in writing will not be accepted by the LGES Directorate and complaints that have been submitted anonymously will not normally be considered for investigation.
- 1.7 Should a written complaint about your conduct be received, the LGES Directorate will assess it to decide whether it is a complaint that can, and should, be investigated. You will be informed about the complaint, and the name of the complainant, before the assessment is undertaken.
- 1.8 The complaint will be assessed against a number of criteria, including:
- whether the conduct complained of is within the scope of the Code;
 - when the conduct occurred; and
 - whether it is proportionate or in the public interest to conduct an investigation.
- 1.9 Importantly, the LGES Directorate will also consider whether any evidence has been provided by the complainant, or is readily available, to support the allegation that there has been a breach of the Code. This requirement for supporting evidence will ensure that vexatious, malicious or frivolous complaints will not be investigated by my Office. You should note, however, that a complaint about your conduct which meets all of the assessment criteria (including the requirement for supporting evidence) will be investigated, regardless of the motivation of the complainant in making the complaint.
- 1.10 The 2014 Act provides my Office with the authority to take action instead of, or in addition to, conducting an investigation, to deal with an alleged breach of the Code. In assessing a complaint, the LGES Directorate will consider whether it would be appropriate to take such action.
- a. Action **instead** of an investigation may be appropriate in circumstances such as:
- where it is considered that the complaint is such that undertaking of an investigation would be disproportionate to the matter complained of or there is no public interest in undertaking an investigation; or
 - where it is considered that there is an alternative mechanism to deal with the complaint (such as any procedure that may exist within a council for dealing with complaint from a council officer about a councillor's conduct), which would be a more appropriate and proportionate recourse in the first instance.

b. Action in **addition** to an investigation may be appropriate in circumstances such as:

- where it is considered that it would be appropriate to recommend that the complainant and the councillor undertake mediation; or
- where it is considered that the councillor should be offered training on the Code.

1.11 The LGES Directorate will aim to complete the assessment of the complaint and to notify you, and the complainant, of its decision, and the reasons for it, within four weeks of the date on which the complaint was received (or within four weeks of the date on which the complainant provided sufficient information in support of the complaint, if this is later).

1.12 Further information about the assessment process, including full details of all the assessment criteria, can be found on my website.

Investigation of complaints

1.13 If the LGES Directorate decides that a complaint about your conduct is to be investigated, you will be given an opportunity to comment on the allegation(s) made against you. The LGES Directorate may then obtain additional evidence as part of the investigation. This evidence may be gathered in a number of ways, including conducting face to face interviews, making written enquiries and obtaining other relevant evidence, such as documents, CCTV footage, photographs, and audio or video recordings.

1.14 In undertaking the investigation, the LGES Directorate can rely on my powers¹ to ensure the attendance and examination of parties to the complaint and any other witnesses, under oath or affirmation if necessary, as well as the production of documents. In addition, you, as a councillor, have a specific obligation under the Code² to comply with any request the LGES Directorate makes in relation to the investigation.

1.15 If you are interviewed during the investigation, you may choose to be accompanied by an individual who can provide you with support. However, that person is not permitted to answer questions on your behalf, advise you during the interview or act in a manner which would obstruct the interview. There is no

¹ The Commissioner has the same powers as the High Court to compel the assistance of persons and the production of evidence, under Article 13(2) of the Commissioner for Complaints (NI) Order 1996

² Code paragraph 4.6

entitlement to legal representation at interview. However, this does not prevent you from being accompanied by your legal representative if you so wish. If you choose to be accompanied, you will be required, prior to the interview, to let the LGES Directorate know the identity of the accompanying person. That person should not be someone who is involved in the investigation in some other way, such as a witness. The LGES Directorate retains the discretion to exclude any party from accompanying you at interview where it is considered that the individual's attendance would impede or prejudice the investigation.

1.16 Under section 55(5) of the 2014 Act, the purpose of an investigation is to determine which of the following findings is appropriate:

- that there is no evidence of any failure to comply with the Code;
- that no action needs to be taken in respect of the matters that have been investigated; or
- that I, as Commissioner, should make an adjudication on the matters that have been investigated.

1.17 The Deputy Commissioner will make the final decision in relation to the finding that is reached following an investigation. Where that finding is either that there is no evidence of any failure to comply with the Code or that no action needs to be taken, the LGES Directorate will provide you (the person complained of) with a copy of the final investigation report. (A copy of the report will also be issued to the Chief Executive of your council and the complainant will be informed of the outcome of the investigation.) The Deputy Commissioner will consider whether it is appropriate to publicise a summary of the investigation report, in accordance with section 57(1)(b) of the 2014 Act. The circumstances in which a summary of the investigation report may be published includes where the complaint is already in the public domain. For example, a complainant may have informed the media that they have brought a complaint against you in relation to an alleged breach of the Code. In those circumstances, it may be unfair to you if the findings of the investigation report were not also made public. Your views will be sought before a decision is made on whether or not to publicise the report.

1.18 Where the Deputy Commissioner considers that the investigation finding is likely to be that I should adjudicate on the matter investigated, you will have an opportunity to comment on the draft investigation report prior to the conclusion of the investigation. The Deputy Commissioner will consider any comments you submit before finalising the report. Both you and the Chief Executive of your council will be provided with a copy of the investigation report. Where the investigation finding is that I should adjudicate on the matter investigated, the Deputy Commissioner will send a copy of the report to me so that the adjudication process can commence.

- 1.19 The LGES Directorate will aim to complete the investigation of the complaint within 48 weeks of the date it notified you, and the complainant, of the decision to conduct an investigation. It is envisaged that the majority of investigations will be completed well within this timeframe, although this will be dependent on a number of factors, including the complexity of the complaint and the timely submission of relevant evidence. You can assist in concluding the investigation as quickly as possible by co-operating with the Directorate's requests to provide information and to attend for interview.
- 1.20 Further information about the investigation process and the opportunities you will have to provide evidence and make representations to the Directorate can be found on my website.

Adjudication on a matter investigated

- 1.21 Prior to making my adjudication, I will provide you with a copy of the investigation report. You will have an opportunity to explain, in writing, whether you disagree with the investigation report, to explain why you disagree, and to provide any evidence or documentation you have in support of your view.
- 1.22 In adjudicating on the matter investigated by the LGES Directorate, I will decide whether or not you have failed to comply with the Code and, if so, what sanction, if any, should be imposed. Section 59 of the 2014 Act provides that I can impose the following sanctions:
- that the councillor should be censured in such terms as I consider appropriate;
 - that the councillor should be suspended, or partially suspended, from being a councillor for such period as I consider appropriate, up to a maximum period of one year; or
 - that the councillor should be disqualified from being or becoming a councillor for such period as I consider appropriate, up to a maximum period of five years.
- 1.24 Where I determine that you have failed to comply with the Code, you, or any representative you appoint, will be able to make a written submission as to what action, if any, you think I should take, explaining any mitigating factors that you consider I should take into account.
- 1.25 Following the adjudication, I will notify you, and the Chief Executive of your council, of my adjudication decision. I will aim to do so within six weeks of the date of the hearing. The written notice of my decision will state whether or not you have failed to comply with the Code and, where I have determined that

there has been a breach, what sanction, if any, I have determined should be imposed. My adjudication decision will be publicised on my website.

- 1.26 Should I decide that you should be censured, suspended or disqualified, you may seek leave to appeal to the High Court to appeal my decision.
- 1.27 Further information about the adjudication process, including the opportunities you will be given to have your representations taken into account is available on my website, www.ni-ombudsman.org.uk. I also intend to provide further information on the factors that I may take into account in adjudicating on an appropriate sanction where I decide that there has been a failure to comply with the Code.

Part 2: Deciding when the Code applies to you

Does the Code apply to you?

2.1 The Code applies to you if:

- you are an elected member of a council;
- you are selected to fill a vacancy between elections (under section 11(4B) of the Electoral Law Act (Northern Ireland) 1962);
- you are treated as a non-voting member of a committee, or sub-committee, of a council (under section 17 of the 2014 Act); or
- you are not a council member but are a member of an overview and scrutiny committee, or sub-committee of such a committee, of a council (as mentioned in section 28(4) of the 2014 Act).

2.2 The term 'councillor', as used in the Code, means any individual who falls within any one of the four categories detailed in paragraph 2.1 above.

When does the Code apply?

2.3 Councillors are entitled to privacy in their personal lives, and many of the provisions of the Code apply to you only when you are acting in the role of councillor or acting as a representative of your council.

2.4 However, there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your council. Some provisions of the Code therefore apply to you at **all times**. (See paragraph 2.5 below for a list of rules which apply at all times). You should ensure that you have a clear understanding of when the different provisions of the Code apply to you, and that your conduct, both when you are acting in the role of councillor or acting as a representative of your council **and** in your private life, meets the requirements of the Code.

2.5 A decision as to whether the Code applies to you at a particular time will have regard to the particular circumstances and the nature of your conduct at that time. The Code applies to you in the following circumstances:

- at those times when you conduct the business of your council or are present at a meeting of your council;
- at those times when you act, claim to act or give the impression you are acting in the role of councillor or as a representative of your council;

- at **all** times when you conduct yourself in a manner that could reasonably be regarded as bringing your position as councillor, or your council, into disrepute;³
- at **all** times when you procure, advocate or encourage any action contrary to the Code;
- at **all** times when you improperly use, or attempt to improperly use, your position to gain an advantage or avoid a disadvantage for yourself or any other person; and
- at **all** times when you improperly use, or authorise the improper use by others, of the resources of your council.

2.6 In addition, the Code applies to you when you are acting as a representative of your council on another body (such as a Policing and Community Safety Partnership or the Northern Ireland Housing Council) unless:

- the other body has its own code of conduct relating to its members (in which case you must observe the body's code of conduct); or
- your compliance with the Code conflicts with any legal requirements, with which the other body must comply. (If this is the case, you must draw the conflict to the attention of your council and the other body as soon as it becomes apparent to you.)

2.7 It is important that you note that when the Code applies to you, it applies not only in relation to what you do, but also to all your communications, both verbal and written. This includes, for example, what you say in the council chamber or in conversation, comments you make in letters or emails and in your use of social media such as Twitter, Facebook or internet forum or blogs.

2.8 The Code applies to you if you refer in any way to yourself in your role as councillor or your actions or communications are clearly related to your role as councillor. Even if you do not refer to your role as councillor, your actions or communications may have the effect of bringing your position as councillor, or your council, into disrepute. As such, they may still be considered to be in breach of the Code⁴.

2.9 You should also be aware that if you are suspended, or partially suspended, from office for any reason, the requirements of the Code that apply *at all times* (as mentioned in paragraph 2.5 above) still apply to you during the period of your suspension.

³ See paragraph 4.5.4 of this document for an explanation of *disrepute*.

⁴ Code paragraph 4.2

Part 3: The Principles of Conduct

- 3.1 Rules alone are not sufficient to regulate and inform conduct. As the Committee on Standards in Public Life noted in its review of best practice in promoting good behaviour in public life⁵, “*Principles are what matters in determining what people ‘should’ do as opposed to what they might ‘get away’ with*”.
- 3.2 The Code consists of twelve principles of conduct (the Principles) and a number of rules of conduct (the Rules). The Principles are intended to promote the highest possible standards of behaviour for councillors. The Rules are the practical application of the Principles. Adherence to the Rules will assist in ensuring compliance with the Principles.
- 3.3 The Code requires that you observe the Principles, which are:
- Public Duty
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
 - Equality
 - Promoting Good Relations
 - Respect
 - Good Working Relationships

The Code’s full descriptions of the Principles are provided in Appendix 1.

- 3.4 The Principles and the Rules (which are addressed in greater detail in Part 4 of this guidance) are integral and complementary elements of the Code; you must observe both. The close relationship between these two elements of the Code is such that your failure to comply with one or more of the Rules is very likely to result in you also failing to meet the standards of conduct required by one or more of the Principles. For example, if you were found to be in breach of the Rule that requires you to *not use bullying behaviour or harass any person*⁶, your conduct will not have met the standards required by the Principle, *Respect*. Similarly, the close association between the Principles and the Rules means that if you follow the Principles as the basis for your conduct, you are less likely to behave in a way that will constitute a breach of the Rules.

⁵ The Committee on Standards in Public Life, *Standards Matter: a review of best practice in promoting good behaviour in public life*, p.24.

⁶ Code paragraph 4.13(b)

Part 4: The Rules of Conduct

4.1 This section of the guidance provides further explanation of the Rules relating to:

- your general conduct;
- the registration of interests;
- the disclosure and declaration of interests;
- lobbying and access to councillors; and
- making decisions.

General conduct

4.2 The Rules that govern your general conduct are set out in Part 4 of the Code. These Rules relate to:

- your obligations as a councillor;
- behaviour towards other people;
- disclosure of information;
- use of your position;
- use of your council resources;
- expenses and allowances; and
- acceptance and registration of gifts and hospitality.

4.3 Guidance on the majority of the Rules regarding these seven categories of general conduct is provided in the following paragraphs. I have not provided guidance on every Rule listed in the section of the Code that deals with general conduct. That is because I consider some of these rules to be self-explanatory. For example, the obligation to report the conduct of any other person that you believe involves, or is likely to involve, criminal behaviour (Code paragraph 4.4) is clear and requires no further clarification.

4.4 However, I will revisit this guidance from time to time, with a view to providing further explanation of the application of the Rules, where I consider this necessary, in light of issues arising and developing case law. If you are in doubt as to how the Code applies to you in a particular circumstance, you should seek advice from an appropriate person in your council or your legal adviser.

4.5 Your obligations as a councillor

Your general obligations

Code paragraph 4.1

“Councillors hold public office under the law and must act:

- a) lawfully*
- b) in accordance with the Code; and*
- c) in accordance with the standing orders of your council”*

- 4.5.1 A failure to act in accordance with the law or the standing orders of your council will be a breach of this Rule. A failure to act in accordance with any of the provisions within the Code will also result in a breach of this Rule.

Bringing your position or your council into disrepute

Code paragraph 4.2

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute.”

- 4.5.2 This Rule applies to you **at all times**, not just when you are acting in the role of councillor.
- 4.5.3 As a councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions - in either your public life or your private life – have the potential to adversely impact on your position as a councillor or your council. Dishonest and deceitful behaviour or conduct that results in a criminal conviction, such as a conviction for fraud or assault, even where such conduct occurs in your private life, could reasonably be regarded as bringing your position as councillor, or your council, into disrepute.
- 4.5.4 When considering whether conduct is such that it could reasonably be regarded as bringing your position, or your council, into disrepute, I will consider:
- whether that conduct is likely to diminish the trust and confidence the public places in your position as councillor, or your council, or is likely to result in damage to the reputation of either; and

- whether a member of the public - who knew all the relevant facts – would reasonably consider that conduct as having brought your position as councillor, or your council, into disrepute.

Example of bringing into disrepute (Wales)

A complaint was made that a councillor was abusive to a shop owner and two members of her staff after his request for a discount on a private purchase, which he misrepresented as being a purchase on behalf of the council, was refused. Following the refusal of the discount, the councillor made threats against the business.

Following an investigation and adjudication of the complaint, the councillor was found to be in breach of the code of conduct by bringing his office into disrepute. The councillor was suspended for nine months.

Conflict of interest

Code paragraph 4.3

“You must review regularly (at least annually and when your particular circumstances change) your personal circumstances and take steps to mitigate any conflict of interest in relation to your functions as a councillor.”

- 4.5.5 It is an essential element of good governance that conflicts of interest are identified and declared, where appropriate. Guidance on dealing with conflicts of interest, both actual and perceived, is provided in the sections of this guidance that explain your obligations in relation to the registration, disclosure and declaration of interests.

Procuring or encouraging action contrary to the Code

Code paragraph 4.5

“You must not, at any time, whether in the course of your duties as a councillor or in private, procure, advocate or encourage any action contrary to the Code.”

- 4.5.6 This Rule applies to you **at all times**, not just when you are acting in the role of councillor.

- 4.5.7 You must not encourage, persuade or support others to disregard or breach the Code. If you engage in such conduct, I will regard your behaviour as being just as serious as if you had taken action contrary to the Code yourself.

Co-operating with the Commissioner's investigation

Code paragraph 4.6

"You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner's statutory powers."

- 4.5.8 You must co-operate with any investigation that is carried out under the 2014 Act. In practice, this may include responding to enquiries from the LGES Directorate by the date notified to you, providing full and accurate responses to those enquiries, providing copies of requested documentation, and making yourself available for interview. It will also include complying with the requirement not to disclose to other parties confidential details of the complaint or information relating to the investigation, or to share details of the complaint with the press or media, since this will be a breach of confidentiality, and may impede or prejudice the investigation.
- 4.5.9 Your failure to co-operate with any request made by the LGES Directorate in relation to an investigation is likely to result in a breach of the Code. You can expect the LGES Directorate to take account of unavoidable or urgent circumstances such as illness, or holiday bookings that you have made. However, you must still co-operate fully with the investigation.
- 4.5.10 You should note that this Rule applies equally regardless of whether you are the subject of the complaint being investigated or you are a witness to conduct complained of.

Example of failing to co-operate with the investigation of a complaint (Wales)

A complaint was made that a councillor had failed to observe the code of conduct by publishing unfounded allegations about the complainant on his blog. The allegations were that the complainant, a head teacher employed by the local authority, intended to retire and stand for election to the council in a seat held by another councillor.

After investigation and adjudication, it was determined that the councillor had breached a number of provisions of the code of conduct. These included failing to co-operate with the investigation (and failing to show respect and

consideration for others).

The adjudication panel found that the councillor had shown disregard for the standards regime and, in particular, to the Public Services Ombudsman for Wales and his staff (who had undertaken the investigation), and those who had conducted the adjudication hearing, by failing to respond to any of the enquiries made of him during the investigation and by providing a weak reason for not attending the hearing. His actions left all those involved with the impression that he had taken the proceedings lightly.

(It was also found that the councillor had failed to show respect and consideration to the complainant by making unfounded and presumptuous allegations concerning his personal life and publishing those allegations.)

The adjudication panel concluded that the councillor should be suspended. The starting point for such a suspension was one month, however, in light of the aggravating behaviour outlined above, a three month suspension was considered appropriate.

Vexatious, malicious or frivolous complaints

Code paragraph 4.7

“You must not make vexatious, malicious or frivolous complaints against other councillors or anyone who works for, or on behalf of, your council.”

- 4.5.11 A vexatious complaint is one that is made with the intention to cause irritation or annoyance. A malicious complaint is one that is intended to cause damage to the person who is the subject of the complaint. Frivolous complaints are those which have no purpose or value. Such complaints may be motivated by political rivalry or by a personal reason, simply to cause distress, annoyance or disadvantage to the subject of the complaint. They are likely to have no basis in fact. As such, complaints of this nature are unlikely to satisfy all the assessment criteria and therefore would not be investigated by the LGES Directorate.
- 4.5.12 Making vexatious, malicious or frivolous complaints is not only a breach of this Rule but may also be contrary to other rules of the Code, such as the requirement not to bring your position as councillor into disrepute⁷.

⁷ Code paragraph 4.2

Promoting and supporting the Code

Code paragraph 4.8

“You must maintain and strengthen the public trust and confidence in the integrity of your council. You must promote and support the Code at all times and encourage others to follow your example.”

- 4.5.13 Your compliance with the Code is essential to maintaining and strengthening the public trust and confidence in the integrity of your council. In addition, your attendance at training events on the Code and your support for activities and events aimed at promoting the Code will assist you in complying with this Rule, although your attendance at, and support for, such events, is not a requirement of the Code.

Providing information to your council

Code paragraph 4.9

“You must co-operate with your council with regard to providing the necessary information to be included in the annual accounts of the council.”

- 4.5.14 Your council may ask you to provide it with information required for inclusion in its annual accounts. Such information may include, for example, details of any related party⁸ transactions between you and your council. You must comply with such requests fully and promptly.

⁸ A related party is an individual or organisation which directs, controls or has significant influence over the Council’s major activities (or which is controlled or directed by the Council). Material transactions between a Council and any individual or organisation which is a related party must be disclosed in the council’s annual accounts.

Equality

Code paragraph 4.11

“You must ensure that you are aware of your council’s responsibilities under equality legislation, and are familiar with the relevant legislative statutes and provisions, in particular, with the obligations set out in your council’s equality scheme.

This will enable you to have due regard to the need to promote equality of opportunity on grounds of age, marital status, disability, political opinion, race, religious belief, sex, sexual orientation and whether or not people have dependants; and to have regard to the desirability of promoting good relations between people of different racial groups, religious belief or political opinion.”

- 4.5.15 Equality legislation imposes positive duties to eliminate unlawful discrimination and harassment, and to promote equality and good relations. You should be aware that under the law, both you and your council may be liable for any discriminatory acts that you commit. This may apply when you do something in your role as a councillor in a discriminatory manner.
- 4.5.16 Further information on equality legislation and your obligations under that legislation, may be obtained from the Equality Commission for Northern Ireland, contact details for which are included in Appendix 2.

Expression of political opinion

Code paragraph 4.12

“You are entitled to legally express any political opinion that you hold. In doing so, however, you should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct.”

- 4.5.17 As the expression of political opinion is inextricably linked to those parts of the Code dealing with respect and consideration for other people, these areas have been dealt with together in the following section. The obligations the Code places on you when you are exercising your right to express political opinion are specifically explained in paragraphs 4.6.2 to 4.6.5 below.

4.6 Behaviour towards other people

4.6.1 There are four aspects to the Rules regarding your behaviour towards other people. These relate to your obligation to:

- show respect and consideration;
- not use bullying behaviour or harass any person;
- not compromise the impartiality of those who work for, or on behalf of, your council; and
- work responsibly, and with respect, with others and with employees of councils.

Respect and consideration

Code paragraph 4.13(a)

“[You must] show respect and consideration for others”

4.6.2 It is to be expected that political groupings in a council will seek to promote and campaign for their ideas and, as part of political debate, may seek to challenge or criticise the policies and actions of their political opponents. Challenges to ideas and opinion are part of the political landscape. It is unlikely that the lawful expression of such political views would lead to a finding of a breach of the Code for failing to show respect and consideration for others.

4.6.3 As a councillor, your right to freedom of expression under Article 10 of the European Convention on Human Rights attracts enhanced protection when your comments are political in nature. “Political” comments are not only those made within the council chamber but may include, for example, comments you may make generally about your council’s policies or about a political opponent. The LGES Directorate’s assessment of whether a complaint should be investigated will take account of all the facts of the case. However, the LGES Directorate is unlikely to investigate a complaint about political comments unless the comments were unlawful or highly offensive. The Courts have found that councillors should have a “thicker skin” in dealing with, and responding to, politically motivated comments. When raising political issues with council officers, particularly those in senior positions, you are entitled to ask questions of the officer concerned. I do, however, expect you to show respect, consideration and courtesy to those officers.

Example demonstrating right to freedom of expression (Wales)

A complaint was made about a councillor posting comments about other councillors and how the council was run. The outcome of the adjudication that followed the investigation of the complaint was that the councillor had breached the code of conduct by failing to show respect and consideration for others, and that the councillor should be censured. The councillor sought judicial review of this decision.

The Court found that although the comments the councillor had posted were sarcastic and mocking and their tone ridiculed fellow councillors, they were 'political expression' because they mainly related to the way in which the council was run, how its decisions were recorded and the competence of councillors.

The Court's ruling said that the adjudication decision had not taken account of the need for politicians to have "thicker skins", and that the finding that there had been a breach of the code of conduct was a disproportionate interference with the councillor's rights under Article 10 of the European Convention on Human Rights. The adjudication decision was therefore set aside.

- 4.6.4 Your right to freedom of expression should not be used as an excuse for improper conduct generally. I expect you to afford other councillors, council officers, those who work for you or on behalf of your council, and members of the public, the same respect, courtesy and consideration that you show to people when you are not acting in the role of councillor.
- 4.6.5 In addition, you should bear in mind that rude and offensive conduct diminishes the public's opinion of, and trust and confidence in, its elected representatives. There may be occasions when members of the public place unreasonable demands on you. However, you should always treat members of the public politely and with courtesy, respect and consideration. This requirement applies not only when you are communicating with members of the public in person but also when communicating with them by telephone, letter, email or through your use of social media.

Example of failing to show respect and consideration (Scotland)

A Chief Executive of a council, together with two councillors, alleged that a councillor had contravened the provisions of the code of conduct. In particular, they each alleged the councillor had breached the provisions relating to showing respect and consideration for others.

The allegations related to an attempt by the councillor to introduce items at a council meeting which were not on the agenda. The Chair of the meeting, on the advice of the Legal Officer, refused to allow the items to be introduced.

When his attempt to introduce new items was refused, the councillor made a number of personal and derogatory remarks about individuals in the chamber and, in particular, about the Legal Officer.

Following an investigation, the complaint was referred for adjudication. The adjudication panel concluded that the councillor had contravened the code of conduct by virtue of the fact that his language and demeanour towards the council's Legal Officer during the Council meeting had been aggressive, discourteous and disrespectful. In addition, the councillor had cast doubt on the competence of the Legal Officer and, by using terms such as "gagging", "stitch up" and "secret meetings", and had implied that other council officers had been acting improperly.

The adjudication panel decided to suspend the councillor for nine months. In reaching its decision, the panel took into account the considerable experience of the councillor, the seriousness of his actions and the fact the investigation findings were supported by additional evidence submitted directly to the panel. In addition, the panel noted the fact that the councillor had refused to accept the investigation findings, did not acknowledge that he had breached the code of conduct, nor did he make any apology for his actions.

Bullying and harassment

Code paragraph 4.13(b)

"[You must] not use bullying behaviour or harass any person"

- 4.6.6 Bullying and harassment is unwanted behaviour that makes someone feel intimidated or offended. It may often be directed at a person over whom the perpetrator has some actual or perceived influence. This behaviour may be directed towards one or more people, and it may involve a single incident or be part of a pattern of behaviour. Bullying and harassment can take many forms,

ranging from extreme intimidating behaviour, such as physical violence, to more subtle behaviour, such as isolating or ignoring someone. Other examples of this type of behaviour include unwanted physical contact, persistent unwarranted criticism, personal insults, setting impossible deadlines and spreading malicious rumours.

- 4.6.7 The legitimate concerns that you may raise, as a councillor, in challenging decisions or policies when scrutinising the performance of your council or other public bodies will not amount to bullying behaviour or harassment. You are entitled in your role as councillor to challenge fellow councillors and officials on their stated views. However, if your criticism is a personal attack on a councillor, a member of his/her family or another individual, or is of a highly offensive nature, this is likely to be considered bullying or harassment and therefore a breach of the Code.
- 4.6.8 Although the LGES Directorate's investigation of, and, where appropriate, my adjudication on, a complaint will take account of all the facts of the case, allegations of bullying and harassment will be considered from the perspective of the alleged victim. The most significant factor is therefore whether the alleged victim was reasonably justified in believing he/she was being bullied or harassed; whether or not a councillor intended to bully or harass that person is not relevant.
- 4.6.9 You should also be aware that the requirement not to use bullying behaviour or harass any person is the same regardless of whether you are communicating with an individual face to face, in writing, or when using social media.

Example of using bullying or harassing behaviour (Wales)

A councillor disagreed with his council's arrangements for the enforcement of parking breaches within the town. The councillor used disrespectful and abusive language and behaved in a bullying and intimidating manner towards council enforcement officers on four occasions. He also sought to use his position as a councillor improperly in relation to a parking offence.

The adjudication of a complaint about the councillor's conduct found that the councillor had pursued a course of threatening behaviour towards the council employees and, consequently, had breached the code of conduct in relation to the requirement not to use bullying behaviour or harass anyone. (The adjudication also found that the councillor had breached the code of conduct by not showing respect and consideration for others; by improper use of his position; and by bringing his position as councillor into disrepute.) The councillor was suspended for a period of 12 months.

Compromising impartiality

Code paragraph 4.13(c)

"[You must] not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your council".

- 4.6.10 Although councillors and council officers have the common interest of serving the community, their responsibilities differ. Councillors are responsible to the electorate throughout the period in which they serve on their council. Council officers are responsible to the council and, in particular, to the Chief Executive of the council in carrying out their duties. Mutual respect and courtesy between councillors and those who work for, or on behalf of, a council, is essential to ensure the efficient and effective running of local government and should be maintained at all times.
- 4.6.11 You should not approach or pressure anyone who works for, or on behalf of, your council to carry out their duties in a prejudicial or partisan way. These individuals must remain neutral and should not be forced or persuaded to act in a way that would damage or undermine their impartiality or, importantly, the public's perception of that impartiality. For example, you should not ask council officers to assist you with the preparation of party political material, or to assist you with constituency matters or matters relating to your private business. You should also not provide or offer any inducement or reward in return for an officer acting in a particular way or reaching a particular decision. This Rule applies in relation to your face to face dealings and to all your communications with council officers, including through your use of social media, or in the press.

Example of compromising impartiality (Wales)

The son and daughter-in-law of a councillor were neighbours of a family who were tenants of the council. Complaints had been made about the family's behaviour. The councillor telephoned council officers, sometimes outside office hours, regarding the family's occupancy of the property and the impact this was having on his son's family. The calls were made in the councillor's role as an elected member of the council and he had direct access to the council officers because of that role.

(Continued Over)

(Continued)

Following the investigation of a complaint about the councillor's actions, the adjudication found that he had pursued a persistent course of conduct, over a period of six months, intended to bring undue pressure upon council officials. The adjudication concluded that by his actions, the councillor had breached the code of conduct as he had sought to compromise the impartiality of the council officers (and also that he had failed to show respect and consideration for others; that his actions amounted to harassment; and that he had used his position improperly to promote the interests of his own family). The councillor was suspended for 12 months.

Working responsibly and with respect

Code paragraph 4.14

"You must work responsibly and with respect, with others and with employees of councils."

- 4.6.12 The effective and efficient running of local government relies heavily on mutual respect and courtesy between councillors and council officers, and between councillors and those who work on their behalf or on behalf of a council. You must therefore work with others in a manner that will maintain good working relationships.
- 4.6.13 In the Code, this Rule makes reference to the protocol that applies to working relationships between councillors and council officers⁹. My consideration of a complaint that alleges your conduct does not comply with this Rule will have regard to the extent to which you have acted in accordance with that protocol.

4.7 Disclosure of information

Code paragraph 4.15

"You must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent; or unless required to do so by law."

⁹ Local Government Employee & Councillor Working Relationship Protocol

4.7.1 Confidential information may take a number of forms. Sometimes, the confidential nature of the information will be explicit, such as when a document is marked 'confidential'. In other cases it will be clear from the nature of the information or from the circumstances in which it was provided to you that the information is confidential: all of the following types of information are confidential in nature:

- commercial information, such as information relating to a contract or a contractor's business;
- personal information such as information relating to a person's employment;
- information which is confidential as a result of a statutory provision. For example, the Commissioner's investigations must be conducted in private and therefore all information relating to his investigations should be regarded as confidential;
- information discussed in the closed sections of meetings should always be treated as confidential; and
- legal advice obtained by your council, whether it was provided by external lawyers or by your council's own legal staff, is covered by legal privilege and should not be disclosed without the permission of the council.

You should note that information that has been published is not confidential.

4.7.2 There will be circumstances where the requirement to maintain confidentiality is implied, for example where the information is received as a result of a relationship where there is an obligation of confidence, such as between a councillor and a constituent. As a councillor, you are in a position of trust and members of the public may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish, as soon as possible, whether some or all of the matters being discussed are to be treated as confidential.

4.7.3 If you are considering disclosing any information which could be regarded as confidential, you should always confirm that you have the authority to do so. In order to protect your position, I would suggest you obtain written confirmation that you have the authority or permission to disclose this information. You should be aware that the owner of the information, or the person who holds it, may not necessarily be authorised to permit you to disclose it.

4.7.4 There are certain limited circumstances where the law permits disclosure of confidential information: where it is in permitted in statute, or where a court has ordered its disclosure, or where it is in the public interest¹⁰. Unauthorised

¹⁰ It will not be sufficient for you to argue that you considered it to be in the public interest to disclose the information. The Courts will come to their own view as to whether the disclosure is in the public interest.

disclosure of confidential information outside these limited circumstances can lead to a legal action for breach of confidence. This could result in an injunction to stop further disclosures and/or damages.. The law on confidentiality has developed in recent years. The courts may recognise that a duty of confidence exists due to the confidential nature of the information itself or the circumstances in which it was obtained or communicated. This is a complex and developing area of law and, if you are in any doubt, you should seek guidance from a senior officer in the Council or from a legal adviser.

Example of disclosing confidential information (Wales)

An elected member who sat on his council's adoption panel disclosed publically details of a person who had applied to the panel to adopt a child. The councillor could only have become aware of the information he disclosed as a result of his membership of the panel.

Following an investigation of a complaint about the councillor's actions, the adjudication finding was that the councillor had breached the code of conduct by disclosing the confidential information. The councillor was suspended from the council for six months.

- 4.7.5 Information and guidance on the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and guidance on your council's obligations under this legislation, is available from the Office of the Information Commissioner, contact details for which are included in Appendix 2.

4.8 Use of your position

Improper use, or attempted improper use, of your position

Code paragraphs 4.16

"You must not:

- a) use, or attempt to use, your position improperly to confer on, or secure, an advantage for yourself or any other person;*
- b) use, or attempt to use, your position improperly to seek preferential treatment for yourself or any other person; or*
- c) use, or attempt to use, your position improperly to avoid a disadvantage for yourself or any other person, or create a disadvantage for any other person.*

- 4.8.1 This Rule applies to you **at all times**, not just when you are acting in the role of councillor.
- 4.8.2 You should not use, or attempt to use, your position as councillor for your, or anyone else's, personal gain. Your behaviour will be considered improper if you seek to further your own private interests, or the private interests of another individual, through your position as a councillor.
- 4.8.3 This Rule includes a requirement for you not to pass on, for your personal gain or the personal gain of others, or to the disadvantage of another person, information you have obtained in confidence as a result of your position.
- 4.8.4 You should be particularly mindful of this provision of the Code if the nature of your occupation, profession or business is such that there is a significant degree of overlap between it and the functions of your council. For example, if your occupation, profession or business relates to land development. You should also take care to comply with this Rule if you are a member of a council committee and also a member of an external group, such as a community group, which could benefit from a decision taken by that committee.

Example 1 of improper use of position (Wales)

An individual complained that a councillor breached the code of conduct when she attempted to use her position as a councillor to gain entrance to the complainant's licensed premises after hours. The complainant said that when the councillor's request was refused, she became abusive and made threats concerning his licence and business. Subsequently, the councillor emailed unfounded allegations about the complainant's behaviour to other councillors and senior elected members (including the First Minister of Wales).

The investigation of the complaint concluded that the councillor's actions in attempting to gain entry to the licensed premises after hours, and her subsequent email to councillors and others, suggested that she had misused her position as a councillor (and had also brought the office of councillor into disrepute).

The matter was referred for adjudication. After hearing all the evidence, the adjudication panel agreed with the investigation finding. It also found that the councillor had failed to comply with requests made by the investigator's office during the investigation. The councillor was suspended from the council for six months.

Example 2 of improper use of position (Wales)

A councillor was a joint co-ordinator of a community group. The councillor did not notify the council of her position in this group. She took part in the consideration of, and voted on, the decision to negotiate a new lease in respect of a workshop used by this community group.

Following an investigation of a complaint about this conduct by the councillor, the adjudication found that the councillor had used her position on the council improperly as the decision, on which she voted, benefitted a group in which she clearly had an interest. The councillor was suspended from acting as a councillor for four weeks.

Perception of preferential treatment being sought

Code paragraph 4.17

“You must avoid any action which could lead members of the public to believe that preferential treatment is being sought.”

- 4.8.5 As a councillor, you must not only avoid any conduct which seeks to further your own personal interests, or the personal interests of others, but also avoid conduct that may give the *impression* that you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public - who knew all of the relevant facts – would reasonably consider that preferential treatment was being sought.

4.9 Use of council resources

Code paragraph 4.18

“You must not use, or authorise others to use, the resources of your council:

- a) imprudently*
- b) in breach of your council’s requirements*
- c) unlawfully*
- d) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of your council or of the office to which you have been elected or appointed*
- e) improperly for political purposes*
- f) improperly for private purposes.”*

- 4.9.1 This Rule applies to you **at all times**, not just when you are acting in the role of councillor. It has two distinct aspects:
- **you** must not use the resources of your council improperly; and
 - you must not consent to, allow or instruct **others** to use your council resources improperly.
- 4.9.2 The type of resource that falls within this Rule is wide-ranging. It includes - but is not limited to - council-issued mobile phones, tablet computers and laptops, transport and administrative support from council officers. Anything that is provided by your council or is paid for from council funds will most likely be a council resource. Council staff are also a resource for the purposes of this Rule.
- 4.9.3 You must only use, and authorise the use of, council resources in accordance with your council's stated requirements. Where the council provides you with a resource, you must only use that resource for carrying out official council business or any other activity for which its use has been expressly authorised by your council. For example, if you use a council-issued mobile phone or other mobile device for personal business – and your council expressly forbids its usage for that purpose – then you are likely to be in breach of this Rule. You should ensure that you are aware of, understand and act in accordance with your council's policies on the use of its resources, and that you have regard to any related guidance it provides to you. If you are in any doubt about this matter, you should seek advice from an appropriate person in your council.
- 4.9.4 You must also manage council resources in a responsible and considerate way. Examples of behaviour that may be in breach of this Rule include avoidable wastage such as excessive and unnecessary printing or leaving a council-issued laptop unsecured. In addition, you must ensure that you act within the law when using council resources. An example of behaviour that falls within this provision is accessing illegal or improper materials online on a council-issued laptop or tablet computer.
- 4.9.5 The Code is clear that you must not use your council's resources improperly for political purposes. You should never use council resources for purely political purposes, such as designing and distributing party political material produced for publicity purposes. However, your council may authorise you to use its resources and facilities for political purposes in connection with its business. For example, this may include holding surgeries in your area and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon the use of resources for these purposes. Using your council's resources outside these limitations is likely to be considered as a breach of the Code.

- 4.9.6 In addition, you must not use your council’s resources improperly for private purposes. This includes, for example, using council resources in relation to your business or employment, or that of a member of your family or other personal associate. There may be circumstances in which your council authorises you to use its resources and facilities for private purposes. This may, for example, include the use of a council-issued mobile phone to make personal calls. Again, you must be aware of the limitations placed upon your use of the council’s resource in such circumstances, including any requirement on you to reimburse costs incurred by the council.

Example of improper use of council resources for political purposes (Wales)

A complaint was made that a former councillor had used the council’s computer systems to produce election leaflets for his colleagues. The former councillor was interviewed and accepted that he had created, or had been the last person to have saved, 23 files of election material and manifestos for some candidates who had difficulty using computers. He said that none of the files were printed using the council’s resources.

The former councillor accepted that the council’s internal policy and the code of conduct did not permit councillors to use its resources for political purposes. He also accepted that he was wrong to have done so.

In this instance, as the former councillor had resigned, no further action needed to be taken.

4.10 Expenses and allowances

Code paragraph 4.19

“You must observe the law and your council’s rules governing the claiming of expenses and allowances in connection with your duties as a councillor.”

- 4.10.1 You must observe the law at all times and your council’s rules relating to the claiming of expenses and allowances in connection with your official duties. If you are in any doubt about your entitlements, or the correct process for making a claim, you should ask an appropriate person for advice. It is important to keep full and proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if your particular council

scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items for which you are claiming.

4.11 **Acceptance and registration of gifts and hospitality**

Code paragraph 4.20

“You must:

- a) in accordance with any standing orders of your council and within 28 days of receipt of any gift, hospitality, material benefit or service, which is above a value specified in a resolution of your council, provide written notification to your chief executive of the existence and nature of that gift, hospitality, material benefit or service;*
- b) not accept from anyone gifts, hospitality, material benefits or services for yourself or any person, which might place you, or reasonably appear to place you, under an improper obligation; and*
- c) discourage gifts and offers of hospitality to any family members which might place you, or reasonably appear to place you, under an improper obligation.”*

4.11.1 It is essential that councillors’ conduct, in undertaking their functions, should not give rise to any conflict of interest, or perception of conflict of interest.

Councillors’ dealings with business and other interests should bear the closest possible scrutiny and avoid any risk of damage to public confidence in local government. Your acceptance of gifts, hospitality, material benefits or services, either for yourself or on behalf of others, could be seen to compromise your objectivity when you make decisions on behalf of, or carry out the work of, your council.

4.11.2 It is important therefore that you do not accept any gifts, hospitality, material benefits or services that would place you under an obligation or which a member of the public - knowing all the relevant facts - would reasonably regard as having placed you under an obligation.

4.11.3 This Rule does not prevent you from attending official events, such as a civic reception or working lunch, where these are authorised by your council.

4.12 **Registration of interests**

4.12.1 The requirements of the Code in relation to the registration (and the disclosure and declaration) of interests are intended to give members of the public

confidence that decisions are being taken in their best interests, not in the best interests of councillors or their family, friends or personal associates.

4.12.2 This section of the guidance explains your obligations with regard to the registration of interests, which are set out in the Rules included within Part 5 of the Code. (An explanation of the Rules relating to the disclosure and declaration of interests, which are set out in Part 6 of the Code, is provided in paragraphs 4.13.1 to 4.13.13 of this guidance.)

Code paragraph 5.2

“Subject to paragraphs 5.4 and 5.6 [of the Code], you must, within 28 days of your election or appointment to office (if that is later) register your personal interests (both financial and otherwise) where they fall within a category mentioned below, in your council’s register by providing written notification to your Chief Executive.

Categories of interests

- a) any employment or business carried out by you;*
- b) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated or non-remunerated director;*
- c) any person, other than your council, who has made a payment to you in respect of your election or any expense incurred by you in carrying out your duties as a councillor;*
- d) any corporate body which has a place of business or land within your council’s district, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;*
- e) any contract for goods, services, or works made between your council and you or a firm in which you are a partner, an unincorporated body (i.e. Industrial & Provident Society), a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (d) above;*
- f) any land in which you have a beneficial interest and which is within your council’s district;*
- g) any land where the landlord is your council and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (d) above;*
- h) any body to which you have been elected, appointed or nominated by your council;*

(Code paragraph 5.2 cont'd)

i) any

- public authority or body exercising the functions of a public nature*
- company, industrial and provident society, charity or body directed to charitable purposes;*
- body whose principal purposes include the influence of public opinion or policy*
- trade union or professional association*
- private club, society or association operating within your council's district*

in which you have membership or hold a position of general control or management; and

j) any land within your council's district in which you have a licence (alone or jointly with others) to occupy for 28 days or longer."

4.12.3 You are required to register, in your council's register of members' interests, any of your personal interests that fall within any of the categories of interests that are listed in paragraph 5.2 of the Code. You must register such personal interests within 28 days of your election or your appointment to office, if that is later.

Code paragraph 5.3

"You must, within 28 days of becoming aware of any interest that falls within a category mentioned in paragraph 5.2 or any change to an interest already registered, register that interest or change by providing written notification to your Chief Executive."

4.12.4 You also have a continuing duty to update the register of interests. Therefore, if you acquire a new and additional registerable interest during the course of your term as councillor, or the nature of an interest already registered changes, you must register that interest, or change, within 28 days of becoming aware of it.

4.12.5 You must register your interests, or changes to interests, by providing written notification to the Chief Executive of your council.

Code paragraph 5.6

"You must within 28 days of becoming aware of any change of circumstances which means that sensitive information previously excluded from your

(Code paragraph 5.6 cont'd)

council's register of members' interests due to it being sensitive is no longer sensitive, notify your Chief Executive asking that the information be included in the register."

- 4.12.6 There is a provision in Part 5 of the Code that permits you to exclude 'sensitive information' relating to any of your personal interests, when registering those interests. The Code defines 'sensitive information' as *"information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation"*. You should note that this exemption applies only in relation to any sensitive information relating to the interest; it does not remove your obligation to register the interest itself. You should also note that as soon as you become aware of a change in circumstances that results in sensitive information you had previously excluded ceasing to be sensitive (as defined above), there is an obligation on you to ask the Chief Executive of your council to include that information in the register.
- 4.12.7 The Code does not specify the level of detail of a personal interest that should be entered in the register. Ultimately, it is for you to decide how much detail of an interest should be recorded. In making such a decision, you should bear in mind your obligation to observe the Principles. You should ensure that, in registering your interests, you include sufficient detail to demonstrate that you are meeting the standards of conduct required by the Principles, in particular, those of *Selflessness, Integrity, Openness and Honesty*.
- 4.12.8 The registration of personal interests is an element of the Code which I expect will give rise to many questions from councillors. If you are in any doubt about your obligations in this regard, including whether you have an interest that falls within one of the categories of registerable interest that are listed in paragraph 5.2 of the Code, you should seek advice from an appropriate person within your council or your legal adviser.

4.13 **Disclosure and declaration of interests**

- 4.13.1 As indicated above, the requirements of the Code in relation to the disclosure and declaration (and the registration) of interests are intended to give members of the public confidence that decisions are being taken in their best interests, not in the best interests of councillors or their family, friends or personal associates.

- 4.13.2 This section of the guidance explains your obligations with regard to the disclosure and declaration of your personal interests, which are set out in the Rules included within Part 6 of the Code. (An explanation of the Rules relating to the registration of interests, which are set out in Part 5 of the Code, is provided in paragraphs 4.12.2 to 4.12.8 of this guidance.)
- 4.13.3 You are required to disclose, or to declare, your personal interests where they relate to a matter coming before a meeting of your council¹¹, including a meeting of a committee or sub-committee. This requirement to declare your relevant interests also applies in your dealings with council officers and in your unofficial relations with other councillors.
- 4.13.4 The Code sets out your obligations in relation to the disclosure and declaration of both pecuniary and non-pecuniary interests. Guidance on the action you must take in relation to both types of interest is provided below.

Pecuniary interests

Code paragraph 6.1

“Section 28 of the 1972 Act requires you to declare any pecuniary interest, direct or indirect, that you may have in any matter coming before any meeting of your council. Such interests will be recorded in the register kept by your council for this purpose.”

- 4.13.5 Paragraph 6.1 of the Code highlights that section 28 of the Local Government Act (Northern Ireland) 1972 (the 1972 Act) requires you to disclose any pecuniary interest that you may have in any matter coming before any meeting of your council. The term, ‘*pecuniary interest*’ is defined in the 1972 Act¹². Pecuniary interests are your business interests (for example, your employment, trade, profession, contracts, or any company with which you are associated) and wider financial interests you may have (for example, investments, and assets such as land and property).
- 4.13.6 Pecuniary interests may be both *direct* and *indirect*; you are required, under section 28 of the 1972 Act, to disclose both. A direct pecuniary interest is one in which you personally may benefit from a decision on the matter before your council. An indirect pecuniary interest is one where your employer, your partner in a legal partnership, a company in which you have shares, or a body of which you are a trustee or director or member, such as a club or charity, may benefit as a consequence of the decision. You should also bear in mind that the 1972

¹¹ Where Council is ratifying the minutes of a committee meeting at which a councillor declared an interest, the declaration need not be repeated unless the specific matter is again raised for discussion.

¹² Section 146

Act requires that a pecuniary interest, either direct or indirect, of your spouse or your civil partner, if you live together, is to be treated as if it was your interest.

Code paragraph 6.2

“You must not speak or vote on a matter in which you have a pecuniary interest. If such a matter is to be discussed by your council, you must withdraw from the meeting whilst the matter is being discussed.”

- 4.13.7 When you disclose a pecuniary interest, either direct or indirect, in a matter coming before a meeting of your council, you must not speak or vote on the matter in which you have the interest. In addition, if the matter is to be discussed by your council, you must withdraw from the meeting entirely during that discussion. This means that you must leave the room while the discussion takes place.
- 4.13.8 In exceptional circumstances, you may be able to obtain a dispensation to speak and vote at a council meeting in spite of having a pecuniary interest in a matter coming before the meeting. The Department has responsibility for granting such dispensations under section 29 of the 1972 Act. Further advice on obtaining a dispensation should be sought from an appropriate person in your council or from the Department, contact details for which are provided in Appendix 2.

Non- pecuniary interests

Code paragraph 6.3

“You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting. In addition to those areas set out in paragraph 5.2 [of the Code], an interest will also be significant where you anticipate that a decision on the matter might reasonably be deemed to benefit or disadvantage yourself to a greater extent than other council constituents. Any sensitive information mentioned in paragraphs 5.4 to 5.6 [of the Code] is not required to be given.”

- 4.13.9 The Code requires that you declare “any significant private or personal non-pecuniary interests” in a matter coming before a meeting of your council, as soon as it becomes apparent to you. Non-pecuniary interests are those that do not involve business or financial matters and can include, for example, those interests that arise through a position of responsibility in, or membership of, a club, society or organisation. A non-pecuniary interest will be considered to be ‘significant’ if:

- it is one that falls within any of the categories of interest listed in paragraph 5.2 of the Code; or
- you anticipate that a decision on the matter coming before the meeting of your council might reasonably be considered by a member of the public to benefit or disadvantage you to a greater extent than other council constituents.

Code Paragraph 6.4

You must declare any significant private or personal non-pecuniary interests in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or sub-committee meeting) when the matter is being discussed. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest.

4.13.10 The Code makes clear that it is your personal responsibility to determine whether you have a significant non-pecuniary interest in any matter coming before your council, having regard to any advice and guidance which you may have received.

4.13.11 The Code requires that, where you declare a significant non-pecuniary interest in a matter, you must withdraw from the meeting when the matter is being discussed. However, the Code makes provision for you to remain in the meeting, if you consider that it would benefit your council to do so. In deciding whether this is the case, you should consider whether your non-pecuniary interest is so significant that it would be inappropriate for you to remain in the meeting. You should also have regard to any specific advice and guidance that your council has provided in relation to this matter.

4.13.12 Where it is appropriate for you to remain in the meeting, despite having a significant non-pecuniary interest in the matter before the council, you may speak and vote if:

- at least half of the council or committee would otherwise be required to withdraw from the meeting due to their personal interest in the matter; or

- your withdrawal, together with that of other councillors of the council or committee who are required to withdraw due to their personal interests in the matter, would leave the council or the committee without a quorum.

You may also remain in a meeting, and speak and vote on a matter in which you have declared a significant non-pecuniary interest, if your interest arises because you are a member of a public body or a member, or supporter, of a charity, voluntary body or other organisation formed for a public purpose. However, unless you have been appointed to represent your council on the body, you must not vote, although you may speak, on any matter directly affecting the finances or property of the body if you are a member of the organisation's management committee or its governing body.

- 4.13.13 The requirements relating to disclosure and declaration of interests are complex. When deciding whether you are required to disclose or declare an interest you must consider whether there may be a perception that your interest may influence how you will vote or decide on the matter. The key consideration is therefore not whether your decision would be influenced by your interest but whether a member of the public – if he or she knew all of the relevant facts – would perceive that the interest is such that it would be likely to influence your decision.
- 4.13.14 If you are in any doubt as to whether you have a personal interest in a matter coming before your council, and what action you must take, I would recommend that you seek advice from an appropriate person within your council or your legal adviser.

Example of failing to declare an interest (ownership of land) (Wales)

A complaint was made that a councillor attended a workshop relating to the consideration of land for inclusion in the Local Development Plan (LDP) having previously submitted an application for land that he owned to be included in that LDP.

An investigation was carried out and the complaint was referred for adjudication. It was found that the councillor had a personal interest in the item that was being discussed as the outcome could have a significant impact on his property and could affect his financial well being.

Accordingly, he was found to be in breach of the code of conduct by not declaring an interest and leaving the room when discussions concerning the area in which his own land was situated took place.

Example of failing to declare an interest (association with a body to receive council funding) (Scotland)

A member of the public alleged that two councillors had contravened the code of conduct by not declaring financial interests during a meeting of the council's Development Committee. At that meeting, a report was presented which recommended, among other things, that the council provide grant funding of up to £25,000 to a particular organisation for the purpose of conducting a business review and preparing a development plan.

The complainant alleged that, at the time of the Development Committee meeting, each of the councillors had failed to register their respective interests in the organisation in question and, since the constitutional arrangements for the dispersal of company surpluses allowed for the possibility of financial gain, had failed to declare their interest.

The complaint was investigated and referred for adjudication. The adjudication concluded that the councillors had contravened the code of conduct by virtue of the fact that they had failed to declare an interest in a particular agenda item.

Both councillors were censured. In coming to this decision, the adjudication panel took into account that the non-declaration of a financial interest – and failure to withdraw from related decision making – is a serious matter which undermines public trust, confidence and respect in local government.

However, the panel also concluded that the councillors' conduct was not wilful, deliberate and dishonest, but negligent and an error of judgment. The adjudication panel felt that ordinarily the contravention of the code of conduct would have been serious enough to warrant a suspension. However, in light of the above considerations, censure was deemed appropriate in this instance.

4.14 Lobbying and access to councillors

- 4.14.1 The Rules that govern your conduct in relation to lobbying and access to councillors are set out in Part 7 of the Code.

Code paragraph 7.4

“If you are lobbied on matters such as applications made under regulatory powers or matters of a quasi-judicial nature, such as the determination of certain licence applications, and you will have a role in the council’s decision on that matter, you must:

- a) make it clear that you are not in a position to lend support for or against any such application; and*
- b) direct any such representations to the appropriate department of the council.*

This does not prevent you from seeking factual information about the progress of the case”

Code paragraph 7.5

“If you are asked to decide on such matters, you must not:

- a) organise support for a particular recommendation on the matter;*
- b) organise opposition to a particular recommendation on the matter;*
- c) lobby other councillors about the matter;*
- d) comply with political group decisions on the matter where these differ from your own views; or*
- e) act as an advocate to promote a particular recommendation in relation to the matter.”*

Code paragraph 7.6

“Paragraphs 7.4 and 7.5 also apply in relation to individual staffing matters such as the appointment or discipline of staff.”

4.14.2 As a general rule, it is an essential element of the democratic process that any individual should be allowed to lobby a council or a councillor. You may be lobbied by a wide range of people including individuals, organisations, businesses and developers. If you are lobbied on any matter in which you will have a role in the council’s decision making on that matter, you must make it clear that you are not in a position to lend support for or against any the decision. You must also direct any such representations to the appropriate department of your council.

4.14.3 As a councillor, you will also participate in decision making in your Council. Your impartiality in the decision making process is key to achieving effective local government. You may listen to the particular views and representations of a lobbyist. However, when making a decision, you must take account of the views of all parties and any advice of guidance offered to you by council officials. Further, when you are involved in the decision making process, you must not express support for or opposition to a particular outcome in advance of the decision being made. This does not, however, prevent you from seeking factual information about the progress of a particular matter or case.

4.15 **Making decisions**

4.15.1 The Rules that relate to your conduct when taking decisions as a councillor are listed in Part 8 of the Code.

Code paragraph 8.1

“When participating in meetings or reaching decisions regarding the business of your council, you must:

- a) do so objectively, on the basis of the merits of the circumstances involved, and in the public interest;*
- b) have regard to any relevant advice provided by your council’s officers, in particular, by the Chief Executive, the chief financial officer (where appropriate) or the council’s legal advisers;*
- c) take into account only relevant and material considerations and discount any irrelevant or immaterial considerations;*
- d) give reasons for your decisions, when required to do so, in the interests of fairness, openness and accountability and in accordance with any statutory requirements;*
- e) act in accordance with any relevant statutory criteria;*
- f) act fairly and be seen to act fairly;*
- g) ensure that all parties involved in the process are given a fair hearing (insofar as your role in the decision making process allows);*
- h) not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any decision;*
- i) not organise support for, or opposition against, a particular recommendation on the matter being considered;*
- j) not lobby other councillors on the matter being considered;*
- k) not comply with political group decisions on the matter being considered, where these differ from your own views;*
- l) not act as an advocate to promote a particular recommendation in relation to the matter being considered.”*

- 4.15.2 Although you are entitled to hold a preliminary view on a matter in advance of a meeting at which a decision will be taken (pre-disposition), you must keep an open mind and be prepared to consider the merits of all views and representations made about the matter under consideration before you reach your decision. You must not make up your mind about a particular matter before you have had the opportunity to consider all of the evidence. To do so is known as a pre-determination. A pre-determination could not only invalidate the Council's decision and leave it open to legal challenge but would also be a breach of the Code.

Example of pre-determination (Scotland)

A Chief Governance Officer of a council alleged that a councillor had, on more than one occasion, breached the code of conduct. In particular, at a meeting of a licensing committee, the councillor pre-judged an application by stating he was minded to support the application, before the committee had heard all of the evidence. It was alleged that in doing so, the councillor failed to observe the rules relating to fair and unbiased decision making.

Following an investigation of the complaint, the adjudication panel found that the councillor had breached the code of conduct in relation to this allegation.

He was also found to have breached the code of conduct in relation to being disrespectful of members of the public who were present at the meeting, when he questioned them in a confrontational and adversarial manner and was dismissive of their views, and in relation to having challenged a council officer in an unacceptable manner, when he questioned both her competence and integrity.)

The councillor was suspended from all council meetings for five months.

- 4.15.3 When taking part in council meetings, and when making decisions relating to council business, you must do so objectively and with an open mind. You must act fairly and take proper account of the public interest during the decision making process. Your decisions must take account of all the relevant facts and policies. In addition, if you seek advice from, or advice is offered to you by, council officials under their statutory functions and duties, you must have regard to that advice before you reach your decision.

Example of not having regard to advice (Wales)

A councillor who chaired a council meeting refused to allow the council's Monitoring Officer to advise members during a debate about the council's 'Annual Audit Letter' from the Wales Audit Office. When the Monitoring Officer did manage to intervene to express grave concerns about the way in which the proceedings were being conducted, the councillor failed to have regard to the Monitoring Officer's advice, and simply said that he "noted [her] comments".

The adjudication found that the councillor had breached the code of conduct in relation to having failed to have regard to the Monitoring Officer's advice. The councillor was suspended for four months. In determining this sanction, the adjudication panel took into account the councillor's full apology and his expression of remorse for his behaviour. The panel indicated that had the councillor not already accepted his wrongdoing, it would have imposed a greater sanction.

- 4.15.4 The Principle of Openness requires you to be as open as possible about your decisions and actions. You must give clear and adequate reasons for your decisions when required. This does not mean that every time you vote you must provide an explanation for your vote. However, in the circumstances where you, the Committee of which you are a member, or the Council, are required to provide reasons for a decision, these should be provided. Giving reasons for decisions is particularly important in relation to regulatory decisions, quasi judicial decisions (such as the granting of certain types of licence) and decisions that affect the rights of individuals. You should ask Council Officers for guidance on when and how reasons should be recorded in these situations.
- 4.15.5 You should also remember that, the Code requires you, as an individual, to provide a reason if, in certain circumstances, you decide to remain in a meeting after you have declared an interest (Code paragraph 6.7). If these circumstances apply, you should ensure that your reasons for remaining are recorded in the minutes of the meeting.
- 4.15.6 Where you propose, second or support a planning decision contrary to an officer's recommendation (Code paragraph 9.9) you must clearly identify and understand the planning reasons for doing so. DoE Guidance on Planning Matters requires that the reasons for any decision contrary to the planning officer's recommendation must be formally recorded in the minutes of the planning committee meeting and a copy placed on the planning application file/electronic record. Also, where you propose, second or support a planning decision contrary to the local development plan (Code paragraph 9.10) you

must clearly demonstrate the planning considerations that justify your decision. DoE Guidance on Planning Matters states that the planning reasons for any decisions made contrary to the local development plan must be formally recorded and a copy placed on the planning application/electronic record.

Part 5: Application of the Code in relation to planning matters

- 5.1. As a councillor, you may fulfil a number of different roles in relation to planning matters. For example:
- you may be lobbied to act as an advocate for or against a particular planning proposal;
 - you may be a decision-maker in relation to a planning application, either as a member of your council's planning committee or as a member of the full council;
 - you may be made aware of an alleged breach of planning control; or
 - you may have a role in the development of local planning policy.
- 5.2 Part 9 of the Code highlights your obligations with regard to the disclosure of interests, lobbying and decision making, which are of particular relevance to a role you may have in relation to a planning matter. Guidance on the Rules concerning these obligations is provided in Part 4 of this document. You should bear in mind, however, that other Rules not specifically referenced in Part 9 of the Code, such as those relating to the improper use of your position, compromising impartiality or your behaviour towards other people, also apply to your conduct when you fulfil a role in relation to the planning aspect of your council's functions. The sections of this guidance that relate to those other Rules are therefore also relevant in relation to your role in planning matters.
- 5.3 In addition, the Department has produced separate guidance¹³ on how the Code applies to you when you are dealing with planning matters. You should ensure you are familiar with that guidance in order that you have a clear and full understanding of all your obligations under the Code. The guidance can be found at:

http://www.planningni.gov.uk/index/news/news_other/news_guidance_planning_element_cllr_code_of_conduct_27022015.htm

¹³ Application of the Councillors' Code of Conduct with regard to Planning Matters

Appendix 1

The Principles of Conduct

Public Duty: You have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in you. You have a general duty to act in the interests of the community as a whole. You have a special duty to your constituents and are responsible to the electorate who are the final arbiter of your conduct as a public representative.

Selflessness: You should act in the public interest at all times and you should take decisions solely in the public interest. You should not act in order to gain financial or other material benefits for yourself, your family, your friends or associates.

Integrity: You should not place yourself under any financial or other obligation to outside individuals or organisations, which might reasonably be thought by others to influence you in the performance of your duties as a councillor.

Objectivity: In carrying out council business, including considering public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit.

Accountability: You are accountable to the public for your decisions and actions and for the way that you carry out your responsibilities as a councillor and must submit yourself to whatever scrutiny is appropriate to your responsibilities.

Openness: You should be as open as possible about the decisions and actions that you take. You should give reasons for your decisions when required and restrict information only when the wider public interest clearly demands it.

Honesty: You should act honestly. You have a duty to declare any private interests relating to your public duties. You should take steps to resolve any conflicts between your private interests and public duties at once and in a way that protects the public interest.

Leadership: You should promote and support these principles by leadership and example in order to establish and maintain the trust and confidence of your constituents, and to ensure the integrity of your council and its councillors in conducting business.

Equality: You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual

orientation, disability, political opinion, marital status and whether or not a person has dependents.

Promoting Good Relations: You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms.

Respect: It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and their councils. You should therefore show respect and consideration for others at all times.

Good Working Relationships: You should work responsibly with other councillors for the benefit of the whole community. You must treat other councillors and with courtesy and respect. You must abide by your council's standing orders and should promote an effective working environment within your council. The relationship between councillors and council employees must at all times be professional, courteous and based on mutual respect. You must show respect and consideration for council employees at all times, and ensure that your actions do not compromise their impartiality.

Appendix 2

Sources of further information

The Northern Ireland Commissioner for Complaints

33 Wellington Place
Belfast
BT1 6HN
Telephone: 028 9023 8321
Email: ombudsman@ni-ombudsman.org.uk
Website: www.ni-ombudsman.org.uk

The Department of the Environment

Local Government Policy Division 1
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG
Email: LGPD@doeni.gov.uk
Website: www.doeni.gov.uk

Northern Ireland Local Government Association

Unit 5B Castlereagh Business Park
478 Castlereagh Road
Belfast
BT5 6BQ
Telephone: 28 9079 8972
Website: www.nilga.org

Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP
Telephone: 028 90 500 600
Email: information@equalityni.org
Website: www.equalityni.org

The Information Commissioner's Office – Northern Ireland

3rd Floor
14 Cromac Place,
Belfast
BT7 2JB
Telephone: 028 9027 8757 / 0303 123 1114
Email: ni@ico.org.uk
Website: www.ico.org.uk