

It is worth noting that where you authorise someone such as a family member to use the authority's resources, you must check whether the authority's rules allow this.

Examples

The complaint alleged a councillor used his computer equipment provided by his local authority for private purposes by downloading inappropriate adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. He was found to have misused the local authority's equipment in breach of the code and had brought his office into disrepute.

A councillor used local authority notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking penalties dishonestly. He was also found by his local authority to have breached this paragraph of the code.

Complying with the Code of Conduct

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your monitoring officer.

As a councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

Councillors should be competent for the work they undertake, and this includes the way in which you conduct yourself when carrying out your role as a councillor. Training helps to develop such competence, ensuring that you understand the Code of Conduct and how it applies to you.

As a councillor you are responsible for your own actions and will be held personally responsible if you breach your local authority's Code of Conduct. Therefore, it is essential that, where you are offered the opportunity by your local authority, you equip yourself with sufficient knowledge of the code to ensure that you comply with it at all times.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

The Code of Conduct is a cornerstone of good governance. It is important for public trust that it is seen to be taken seriously by individual councillors as well as the local authority as a whole.

While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code.

It is equally important if you have made a complaint which the local authority has decided merits investigation that you continue to cooperate. Complaints made simply to damage the reputation of an individual through inferences but which you are not willing to support through your cooperation will damage relationships and will also damage the reputation of you and your local authority.

If you are asked to assist the investigator as a potential witness it is again important that you do so to allow as fully rounded a picture as possible to be drawn so that any determination on a case has as much evidence as necessary in order to reach the correct decision. You should let the investigator know if you need any reasonable adjustments made.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course. If you seek to intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

When does the duty not to intimidate start and avoiding allegations of intimidation?

Once there is the possibility of a complaint that the Code of Conduct has been broken, councillors need to be alert to how their behaviour towards potential witnesses or officers involved in handling of their case may be viewed. However innocently the contact is intended or may appear, great care should be taken when councillors deal with people involved with their case.

You should refer to your local authority's procedures and protocol for dealing with alleged breaches of your Code of Conduct.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

Fair, consistent, and proportionate sanctions help to ensure the integrity of the standards framework and thus maintain public trust and confidence in councillors, your role, and your authorities. It is important that councillors and local authorities take standards of conduct seriously and the use of sanctions helps to demonstrate this.

Failure to comply with sanctions can bring the standards framework into disrepute.

Part 3 – Protecting your reputation and the reputation of the local authority

The code requires you to register matters under 2 separate categories:

1. Gifts and hospitality, you receive in your role as a councillor; and
2. Certain types of interests

Registration of gifts, hospitality and interests

Gifts and hospitality

As a councillor:

9.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

9.2 I register with the monitoring officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

9.3 I register with the monitoring officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered.

However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your monitoring officer for guidance.

What does “hospitality” mean?

Hospitality can be defined as any food, drink, accommodation, or entertainment freely provided or heavily discounted.

How much detail should I include on the register?

Where you register gifts or hospitality you should include the name of the person or organisation who gave you the gift or hospitality; the date on which you received it; the reason it was given; and its value or estimated value.

How do I know if gifts or hospitality have been offered to me because of my role as a councillor?

The code says you must register any gift or hospitality received *in your capacity as a councillor* if the estimated value exceeds £50 or such other limit as agreed by your local authority.

You should ask yourself whether you would have received the gift or hospitality if you were not on the local authority. If you are in doubt as to the motive behind an offer of a gift or hospitality, we recommend that you register it or speak to the clerk or monitoring officer before deciding whether to accept it. You should also refer to the local authority's policy on gifts and hospitality.

You do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should apply common sense when you consider how receipt of a gift might be interpreted. For example, if you are the chair of the planning committee and a birthday present arrives from a family friend who is also an applicant just before a planning application is due to be considered, then you need to think about how this would be interpreted by a reasonable member of the public.

What about gifts or hospitality I do not accept?

The code makes it clear that the presumption is that you do not normally accept gifts or hospitality. While gifts or hospitality can be offered for benign reasons it is important for your reputation, the reputation of the local authority and the need to reassure the public that decision-making is not being improperly influenced that you do not accept gifts or hospitality wherever possible.

Simply accepting gifts or hospitality and then registering it does not mean that it may be seen as reasonable. Accepting an expensive meal from somebody who is negotiating for a contract with the council, for example, is not 'made right' by being recorded on a public register.

There will be times, however, where turning down hospitality or gifts could be seen as causing unnecessary offence. For example, if you have been invited as a ward councillor to a local festival or faith celebration along with other members of the community then it may be entirely appropriate to accept the hospitality. However, you should always exercise particular caution if the organisers are involved in ongoing negotiations with the local authority on a particular matter.

Where you are offered a gift or hospitality but decline it you should nevertheless notify the monitoring officer. That helps the authority to identify if there are any patterns and to be aware of who might be seeking to influence the authority.

What about gifts or hospitality that falls below the limit in the code?

You should always notify the monitoring officer of any gift or hospitality offered to you if it could be perceived as something given to you because of your position, especially where the gift or hospitality is from somebody who has put in an application to the local authority (or is about to) even where that hospitality falls below £50 or the limit set by the local authority.

While that would not be a matter for the public register it again allows the authority to be aware of any patterns.

Also, an accumulation of small gifts you receive from the same source over a short period of say a couple of months that add up to £50 or over should be registered in the interests of transparency.

What if I do not know the value of a gift or hospitality?

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may therefore have to estimate how much a gift or hospitality is worth. For example, if you attend a dinner as a representative of the authority which has been pre-paid by the sponsors you would need to make an informed judgment as to its likely cost.

What if I'm at an event but don't have the hospitality or only have a small amount?

The best way to preserve transparency is for you to assess the hospitality on offer, whether it is accepted or not. This is because it would clearly not be in your interests to be drawn into arguments about how much you yourself ate or drank at a particular occasion. For example, you may find yourself at a function where relatively lavish hospitality is on offer, but you choose not to accept it. You may go to a champagne reception but drink a single glass of orange juice for example.

As a guide you should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. What you have been offered is the value of the event regardless of what you actually consumed. Clearly where you are in any doubt the prudent course is to register the hospitality.

Is there a minimal threshold where I wouldn't have to notify the monitoring officer?

The code is about ensuring that there is transparency and accountability about where people may be trying to influence you or the local authority improperly. However, in the course of your duties as a councillor you will be offered light refreshments or similar on many occasions. It is perfectly acceptable to have a cup of tea or biscuits at a meeting with residents at the local community centre for example and there may be times when an external meeting lasts all day and the organisers offer you a sandwich lunch and refreshments.

The Government's guide to the Bribery Act for employers says that 'the Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure. In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and

the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act.'

You should use your discretion and think how it might look to a reasonable person but always seek the views of the monitoring officer or clerk where you are a parish councillor if in doubt.

What are 'normal expenses and hospitality associated with your duties as a councillor'?

As well as the minimal threshold hospitality above there will be times when you are paid expenses which include an element for food and drink as part of your role.

The focus of the code is on the source of the hospitality and its nature. Hospitality does not need to be registered where it is provided or reimbursed by the authority or where it is clearly ancillary to the business being conducted, such as an overnight stay for an away-day. Therefore, hospitality at a civic reception or mayor's ball would not need to be registered.

However, the hospitality should be registered if it is provided by a person or body other than the authority and is over and above what could reasonably be viewed as ancillary to the business conducted. You might meet dignitaries or business contacts in local authority offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality.

If you are away at a conference and you are offered entertainment by a private company or individual or attend a sponsored event you should consider registering it.

What if my role involves me attending regular events or receiving gifts or hospitality?

Some roles in a local authority will inevitably involve being offered more entertainment than others because of the 'ambassadorial' nature of the role. For example, the mayor or chair of the authority will be invited to a large number of functions and the leader of the local authority may be attending events as political leader of the local authority.

Although the mayor or chair, for example, may attend many social functions, they are not exempt from the requirement to register hospitality as individual councillors. However, where the hospitality is extended to the office holder for the time being rather than the individual, there is no requirement under the code to register the hospitality against your individual register. The question a councillor needs to ask themselves is, "Would I have received this hospitality even if I were not the mayor/chair?" If the answer is yes, then it must be registered.

If matters are recorded on a mayor or chair's register any entry on the register should make it clear that gifts or hospitality are being accepted because of the office held and, where possible, any gifts accepted should be 'donated' to the local authority or to charity or as raffle prizes for example.

Gifts that are clearly made to the local authority, for example a commemorative goblet which is kept on display in the local authority's offices, do not need to be registered in the councillor's register of gifts and hospitality. However, such gifts ought to be recorded by the local authority for audit purposes.

Register of interests

Section 29 of the Localism Act 2011 requires the monitoring officer to establish and maintain a register of interests of members of the local authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision-making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the monitoring officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)**.

[\[https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests\]](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012".

You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)** [\[https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests\]](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests).

You must register two different categories of interests:

1. Disclosable Pecuniary Interests – these are categories of interests which apply to you and your partner. The categories are set out in regulations made under s27 of the Localism Act 2011 and knowing non-compliance is a criminal offence.
2. Other registerable interests – these are categories of interest which apply only to you and which the LGA believes should be registered as an aid to transparency.

Further details about these two categories follow. For guidance on when these interests give rise to a matter which needs to be declared at a meeting see the **guidance on declaring interests in Part 3**. [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest>]

Disclosable Pecuniary Interests

These are interests which must be notified to the principal authority's monitoring officer within 28 days of the code being adopted by your local authority or within 28 days from when you become a councillor in accordance with the statutory requirements of the Localism Act 2011. These are enforced by criminal sanction, and failure to register or declare such an interest at a meeting is a criminal offence. You must keep your register up to date so, as soon as a new interest needs to be registered or you cease to hold an interest, you should notify the monitoring officer.

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) and the categories covered are set out in Appendix A of the Code.

Offences

It is a criminal offence under the Localism Act 2011 to

- fail to notify the monitoring officer of any disclosable pecuniary interest within 28 days of election or co-option
- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- fail to notify the monitoring officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- knowingly or recklessly provide information that is false or misleading in notifying the monitoring officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to five years.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

Any beneficial interest in land which is within the area of the council

Land and Property

'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income

Licences

Any licence (alone or jointly with others) to occupy land in the local authority for a month or longer

Any tenancy where (to the councillor's knowledge)—

Corporate tenancies

(a) the landlord is the council, and

(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of

Any beneficial interest in securities* of a body where—

(a) that body (to the councillor's knowledge) has a place of business or land in the council, and

(b) either—

Securities

(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share

capital of that body, or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class

* director' includes a member of the committee of management of an industrial and provident society

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

Does 'office carried on for profit or gain' include allowances I may receive from another local authority I sit on?

If you receive allowances which are treated as taxable income rather than simply being pure reimbursement of expenses, say, then they do need to be registered and declared as appropriate

Reimbursement of expenses is separately covered by the DPI category 'sponsorship' and makes clear that it excludes the need to register or declare reimbursement of expenses from one's own authority. However, that does not exclude any allowances received from another authority. This is supported by a letter written by the then Minister Brandon Lewis to Desmond Swayne MP in 2013 when this issue was raised with Government which said "a member being in receipt of taxable members' allowances may be considered to give rise to a disclosable pecuniary interest under the subject of 'Employment, office, trade or vocation' set out in the regulations

That means that any member in receipt of taxable allowances from another authority would have to register such as a DPI. For example, a parish councillor who is also a district councillor and is in receipt of taxable allowances from the district would need to register that fact

How much detail do I need to put about my employment?

It is not enough simply to put, for example, 'management consultant' or 'teacher'. Sufficient detail should be given to identify your company or employer. This aids transparency and allows people to see where potential conflicts of interest may arise

Where you have a sensitive employment, which should not be disclosed you should discuss this with your monitoring officer (see 'sensitive interests' below). While the law on sensitive interests only applies to where there is a fear of intimidation there may be employment, such as certain sections of the military, which cannot be disclosed for other reasons so you should always seek advice if in doubt

What is a contract with the local authority?

Some councillors' own businesses which may have dealings with the local authority. For example, a grounds maintenance company may contract with a parish council for grass cutting. Such contracts should be included on the register of interests.

More broadly, councillors, as residents, may have dealings with the local authority in their personal lives. For example, some councillors pay their own local authority to have garden waste collections, rent an allotment or may be a member of the gym of a local authority operated leisure centre. Such arrangements form a subscription service that are open to all residents, and do not require registration.

How much detail is required of landholdings?

Sufficient detail should be given to identify the land in question.

An address and, where the address is not sufficient, details that are sufficient to identify the land will usually meet the requirement. A plan identifying the land may be useful in some situations but is not a requirement.

Do you have to register the landholdings of your employers or bodies you have shareholdings in?

In general, there is no requirement to list the landholdings of companies or corporate bodies included in the register. The only requirement is to register any tenancy between such bodies and the authority (under the corporate tenancies). Obviously, you can only be expected to register those you ought reasonably to be aware of, so, for example, if you work for a large housebuilder you may not be aware of which land in the local authority's area they had options on.

You do need to be mindful of your level of control in the company and the effect this may have on your benefit from the land. For example, if you and your spouse jointly owned a farming business, you would be the sole beneficiaries of any land owned by that farm and as such it is strongly advised to register land held by companies in which you have a controlling interest.

What about my home and tenancies?

The most common beneficial interest in land councillors have is their home address. You should include in here your home if you live in it; whether that be as a result of a mortgage, tenancy, or other arrangement (for example, a councillor is living with their parents but not paying a rental fee to them).

You should also include in the section for beneficial interests in land any tenancy properties you own in the local authority's area.

How much information do you have to give out about shareholdings?

In general, if you hold more than £25,000 of equity in a company, or more than 1 per cent of a shareholding, you are required to declare this.

Many councillors hold investments through trust funds, investment funds or pension funds which are managed by fund managers. In that situation, you may not know if you actually hold more than £25,000 in a single company or more than 1 per cent of a shareholding. The expectation is that you should take reasonable steps to ensure you do understand what investments you may have and whether the requirement to register applies, and so:

1. It can be helpful for councillors to state on their form that they have funds invested in specific funds.
2. It can be helpful for councillors to make fund managers aware of their requirement to declare where they hold significant investments within a company that operates in the local authority's area so that they can be notified if this is the case.

Do I have to separate my spouse/partners interests and my own interests?

The law only requires you to register the interests, and you are not required specifically to state whether the interest is held by you, or by your spouse. However, many local authorities do ask for this information as it can be more transparent to separate it.

How much information do I need to obtain from my spouse/partner?

You need to make sure you take all reasonable steps to obtain information from your spouse or partner about their interests. For example, you would reasonably be expected to know where they worked, or if they owned any rental properties. You would be expected to ask if they had any shareholdings in companies, but they may not know the full details of an investment fund they had and where it was invested, and if that were the case, you would not be expected to know (and register) it either.

Other registerable interests

In addition to the Disclosable Pecuniary Interests above, you must, within 28 days of the code being adopted by your local authority, or your election or appointment to office (where that is later), notify the monitoring officer in writing of the details of your interests within the following categories, which are called 'other registerable interests':

- (a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your local authority;
- (b) Details of any body of which you are a member or in a position of general control or management and which –

- exercises functions of a public nature
- is directed to charitable purposes, or
- is a body which includes as one of its principal purposes influencing public opinion or policy

(c) Details of any gifts or hospitality with an estimated value of more than £50 or such other limit as your local authority has agreed, that you receive personally in connection with your official duties.

With Other Registerable Interests, you are only obliged to register your own interests and do not need to include interests of spouses or partners. Therefore, a spousal interest in a local group is not registerable as an 'other registerable interest'. Failure to register these interests is **not** covered by the criminal offence but would be a breach of the code.

What is a “body exercising functions of a public nature”?

Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition -

- does that body carry out a public service?
- is the body taking the place of local or central government in carrying out the function?
- is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- is the function exercised under legislation or according to some statutory power?
- can the body be judicially reviewed?

Unless you answer “yes” to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature.

Examples of bodies included in this definition: government agencies, other councils, public health bodies, council-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of a council, school governing bodies.

Do local campaigning or Facebook groups need to be registered?

Membership (which does not include simply being on a mailing list), of local campaign or Facebook groups will only need to be registered if they are bodies:

- exercising functions of a public nature;
- directed towards charitable purposes; or
- one whose principal purpose includes influencing public opinion or policy.

Generally, it is unlikely that these groups will be regarded as formal bodies to be registered. However, each case should be considered on its own merits. ‘A Body’ is defined as ‘a number of persons united or organised’. Some groups are very united on their cause and organised, but their purpose must fall under one of the functions listed above.

There must also be some formality to the membership, such as registration for example. Simply attending a meeting of a local campaign does not of itself make you a ‘member’ of that organisation.

There has been a growth in organisations which are more nebulous in nature, and no formal membership requirements exist, such as Extinction Rebellion. It can be helpful to ask yourself the question “do I consider I am a member of the organisation” and if the answer is yes, then register the membership for transparency purposes.

If you need further information or specific advice, please speak to your clerk or monitoring officer.

What about membership of a political party or trade union?

The second category of other registerable interests refers to membership of a body or being in a position of general control and management of a body, one of whose principal purposes includes the influence of public opinion or policy. This includes any political party or trade union. Memberships of political parties and Trade Unions therefore need to be registered. Remember that if because of membership of a political party or a trade union any payment or financial benefit is received, it is likely to come under the Sponsorship category of DPI.

Sensitive interests

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the monitoring officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

What is sensitive information?

It may include your sensitive employment (such as certain scientific research or the Special Forces) which is covered by other legislation or interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you. For example, disclosure of your home address where there has been a threat of violence against you or where there is a court order protecting your whereabouts.

You should provide this information to your monitoring officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. You do not need to include this information in your register of interests, if your monitoring officer agrees, but you need to disclose at meetings the fact that you have an interest in the matter concerned (see guidance on declaring interests).

What happens if the monitoring officer does not agree that the information is sensitive?

It is for the monitoring officer to decide if the information is sensitive. You must notify the monitoring officer of the information which you think is sensitive and give your reasons and any supporting evidence.

If the monitoring officer agrees, this information does not need to be included in the register of interests. However, if the monitoring officer disagrees then it must be registered.

What happens if the information stops being sensitive?

You must notify the monitoring officer of any change in circumstances which would mean that the sensitive information is no longer sensitive within 28 days of the change, for example a change in employment. The information would then be included in the authority's register of interests.

I haven't received a direct threat, but I am concerned about registering my home address.

At present, councillors are required to register their home address as part of their local authority's register of interests which are typically published on their local authority website. There have been growing concerns about the potential for threats and intimidation to councillors by virtue of disclosing their home address. Whilst some councillors believe disclosing a home address is a core component of democracy and it is important for the public to know where a councillor may live as they may be making decisions that have an impact on their property, others are very concerned about it. Section 32 of the **Localism Act 2011** [https://en.wikipedia.org/wiki/Localism_Act_2011] allows Local Authorities to withhold sensitive interests from the public register where their disclosure could lead to violence or intimidation. It is recommended that councillors should not be required to register their home addresses as a disclosable pecuniary interest. The **Committee on Standards in Public Life** [https://en.wikipedia.org/wiki/Committee_on_Standards_in_Public_Life] 's review of Local Government Ethical Standard recommended in January 2019 that councillors should not be required to register their home addresses as a disclosable pecuniary interest. However, at present the Government has not legislated for this.

It is important that if councillors have such concerns, they share these with the monitoring officer transparently and openly so they can be properly considered.

Who should you notify when registering your interests?

The Localism Act and the Code both say that the monitoring officer is responsible for maintaining the register. You must therefore notify your monitoring officer of your interests to be registered. This is also true for parish councillors that you must notify the monitoring officer of the district, metropolitan or unitary authority for the area in which the parish council is situated.

However, the obvious point of contact for information of this type for the public is the parish clerk. The clerk needs to have an up-to-date copy of the register of interests in order to comply with public access requirements and there is a requirement for the parish council to publish the registers on their website where they have one, either directly or through a link to the relevant page on the principal authority's website. It also ensures that the clerk is aware of potential conflicts if they arise in a parish council meeting and can advise accordingly. It is therefore practical for the parish clerk to act as the point of contact between parish councillors and the relevant monitoring officer by collecting their interests together, passing them on and regularly asking councillors to review if there have been any changes.

However, you should ensure that there is a system in place for the parish clerk to pass on immediately any information to the relevant monitoring officer as each individual councillor is ultimately responsible for ensuring that the relevant monitoring officer is in possession of all the required information.

Declarations of interest

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the monitoring officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1 of the Code** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>], is a criminal offence under the Localism Act 2011.

Appendix B of the Code [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>] sets [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>] out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your monitoring officer.

This part of the Code is about the registering of your interests and then how to go about declaring or managing your interests.

At heart there is a simple principle – as public decision-makers, decisions must be made in the public interest and not to serve private interests. However, the rules to set out whether you have an interest or not in any given situation can be complex given the infinite variety of issues that may arise. This guidance is to help you steer a way through those rules.

The Code therefore requires members to declare interests in certain circumstances. Disclosure, in the register and at meetings, is about letting members of the public and interested parties know where you are coming from when involved in decision making and is to enable you to be 'up front' about who you are and what your conflicts of interest might be. Conflicts of interest in decision making as a councillor, and what in public law is known as 'apparent bias', are an established part of the local government legal landscape. The Nolan Principles and the Model Code require councillors to act impartially (i.e. not be biased) when carrying out their duties. **(See also guidance on bias and predetermination in Part 3) [1]**

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority, yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

The object of this part of the Code is therefore twofold.

Firstly, it is to provide an explanation and a guide to the public and councillors as to what is or isn't a conflict of interest and then how a conflict between the interest you may hold as an individual councillor and the public interest you must hold as a decision maker of a public authority can be best managed.

Secondly, the Code provides a means to hold an individual councillor to account for their actions when they fail to manage that conflict of interest properly and put the decision of the public authority, including the public purse, and decisions around individuals' daily lives, at risk.

The test at law for apparent bias is 'would a fair-minded and informed observer, having considered the facts, conclude that there was a real possibility of bias'. This is why you will see this question reflected in the Code when you are asked to consider whether or not you should participate in a meeting where you have a conflict of interest.

The code contains three different categories of interests – **Disclosable Pecuniary Interests (DPI); Other Registerable Interests (ORI); and Non-Registerable Interests (NRI)**.

For the first two categories these are interests which must be recorded on a public register except in limited circumstances (**see guidance on Registration of Interests in Part 3**) [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest>]. The third category do not need to be recorded on the register but will need to be declared as and when they arise.

This means an interest may arise not just from interests already on your register. There will also be times when, although the interest does not personally involve you, it may involve a relative or close associate. You are not expected to register every interest of those people, but you will need to declare them as and when they might arise. These are referred to in the code as '**non-registerable interests**'.

As a brief summary, the requirements of the code apply where:

1. you or someone you are associated with has an interest in any business of your authority, and;
2. where you are aware or ought reasonably to be aware of the existence of that interest, and
3. you attend a meeting of your authority at which the business is considered (or where you are making a delegated decision as an individual under executive arrangements).

You must disclose to that meeting the existence and nature of your interests at the start of the meeting, or when the interest becomes apparent. It is usual to have for any declarations of interest at the start of the meeting but it is good practice also to ask again at the start of any agenda item. For example, members of the public may only be present for a specific item so will not have heard the declaration at the start, and a member may only become aware of the interest part-way through the meeting or item in any case.

And there will be times that because your interest is so close to the matter under discussion you will not be able to take part in that item of business. Those circumstances are explained in greater detail for each category of interest below.

This means there are three types of interest which you may have to declare:

Disclosable Pecuniary Interests (Part A of the Register [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-a-the-seven-principles-of-public-life>]); [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-a-the-seven-principles-of-public-life>]

Other Registerable Interests (Part B [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]); [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>] and **Non-registerable interests** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>].

Guidance is given below on each of these categories in turn.

Disclosable Pecuniary Interests

(Annex B, paragraphs 4 and 5) [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]

Disclosable Pecuniary Interests (or 'DPIs') were introduced by s30 of the Localism Act 2011. They are a category of interests which relate to the member and/or their partner, such as financial interests of you or your partner such as your house or other property, or if you have a job or own a business. The categories are set out in regulations made under the Act and are in **Table 1 of Annex B of the Code** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>].

'Partner' is defined by regulations as your 'spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.'

They must be registered and, where they come up in a meeting, declared. Failure knowingly to register or declare a DPI is a criminal offence under the Localism Act.

The Localism Act says that if you are present at a meeting of the Council, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest **in any matter to be considered or being considered at the meeting**:

- you may not participate in any discussion of the matter at the meeting
- you may not participate in any vote taken on the matter at the meeting
- if the interest is not registered, you must disclose the interest to the meeting
- if the interest is not registered and is not the subject of a pending notification, you must notify the monitoring officer of the interest within 28 days.

The Act says you need to declare the nature of the interest only if it is not on the public register. In addition, your authority's rules might require you to leave the room where the meeting is held while any discussion or voting takes place.

However, the Model Code states that it is important to declare the nature of the interest and to withdraw while the item is being dealt with. This aids transparency for the public and helps avoid accusations that you may be seeking to influence the outcome by remaining in the room even if your local authority's rules don't explicitly require it.

If you have a **DPI**, you may in certain circumstances be granted a dispensation to take part (see guidance on **Dispensations in Part3**).

When does a Disclosable Pecuniary Interest arise?

The Localism Act uses the phrase 'you have a DPI in any matter...'

This wording has led to some confusion as to what circumstances would lead to the need to declare a DPI. The Explanatory Notes to the Localism Act say that section 31 of the Act "requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered **relates to** their interest. ... It prohibits a member from participating in discussion or voting on any matter **relating to** their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations)." [our emphasis].

This means you have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed **directly relates** to your registered interest or that of your partner, rather than simply affecting it.

For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does **not directly relate** to your registered interest. You may however have a non-registerable interest (see below) as the application may indirectly affect your property.

Does setting the Council Tax or precept give rise to a DPI?

The LGA is clear that you do not have a DPI simply if you are voting to set the Council Tax or precept. Guidance issued by the Government in 2013 made clear that 'any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.'

The Council Tax and precept are charges on all relevant properties in the area and do not directly relate to any single property in such a way as to give rise to a DPI. Members are therefore fully entitled to vote on the matter (subject to rules about Council tax arrears).

Other registerable interests

(Paras 6, 8 and 9 of Annex B) [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]

The second category of interests are 'other registerable interests' or ORIs.

If you have an 'Other Registerable Interest' – that is an interest which falls within the categories in Table 2 in Annex B - the Code says you should not participate in the relevant business in two circumstances:

1. when a matter directly relates to the finances or wellbeing of that interest. (para 6); or
2. when a matter affects the finances or wellbeing of that interest to a greater extent than it affects the majority of inhabitants; and a reasonable member of the public would thereby believe that your view of the public interest would be affected (paras 8 and 9).

An interest 'directly relates' to an outside body where the local authority is taking a decision which directly relates to the funding or wellbeing of that organisation

For example, under a) if you are a member of a group which has applied for funding from the local authority, or if you are a member of an organisation which has submitted a planning application, the decision directly relates to that organisation.

In such a case you must not take part in any discussion or vote on the matter. You can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. For example, you may want to put forward the organisation's case as to why it has applied for funding, but representatives from competing organisations would also need to be able to make their case.

If the public are not allowed to address the meeting on that item, you would need, if necessary, to get another councillor who did not have an ORI to make any relevant case.

If the local authority is simply discussing that outside organisation but not making a decision which relates to its finances or wellbeing – for example discussing the annual report from the organisation – that does not directly relate to the organisation as there is no direct impact on the organisation which would give rise to a conflict of interest.

Under b) if you are on the committee of the local village hall and an application for a licence for another venue in the village is made which may take trade away from the village hall then the matter would affect the village hall and a reasonable person would believe that would affect your view of the public interest so those two tests are met.

You would not have an interest if the local authority was discussing early planning for an event, which may or may not be held in the village hall as there would be no direct financial impact at that time. When the plans crystallised then an interest would arise as a decision would be made which would have financial implications.

There will also be circumstances where you do not need to declare an interest even though the matter may be relevant to the wider aims of an organisation of which you are a member. For example, if you are a member of a charity such as the Royal Society for the Protection of Birds (RSPB), you do not need to declare an interest every time the local authority might discuss matters relating to habitats or conservation issues. Those issues may reflect the wider aims of RSPB, but they do not directly relate to or affect the organisation and your mere membership of the organisation has no bearing on the matter.

If you were in a position of control or general management in that body and the organisation was campaigning actively on the specific issue being discussed or you personally were campaigning actively on that specific issue the situation would be different. In those circumstances you may have an interest and there is a risk of predetermination. Where there is doubt you should always seek advice from the monitoring officer (or clerk if you are a parish councillor).

As with DPIs you can be granted a dispensation (see below) and if the interest has not been registered or notified to the monitoring officer you should do so within 28 days of the meeting.

Non-registerable interest

(paras 7, 8 and 9 of Annex B) [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]

The third category of interests is Non-registerable interests or NRIs.

A **Non-registerable Interest** arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).

As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances:

- a. when a matter directly relates to that interest. Or
- b. when a matter affects that interest to a greater extent than it affects the majority of inhabitants and
 - a reasonable member of the public would thereby believe that your view of the public interest would be affected

For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.

For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner's home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.

Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest.

In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents.

As with DPIs you can be granted a dispensation (see below).

What is the difference between 'relates to' and 'affects'?

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

What does “affecting well-being” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your wellbeing on a temporary basis. Closure of a local amenity may have a more permanent impact on your wellbeing if you use it more than the majority of people in the area.

What are the definitions of relative or close associate?

The Code does not attempt to define “relative” or “close associate”, as all families vary. Some people may have very close extended families, but others will have more distant relations. You should consider the nature of your relationship with the person (eg whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor. It would be a person with whom you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently.

What if I am unaware of the interest?

You can only declare an interest in a matter if you are aware of the interest. For example, a company of which your father-in-law is a director may have made an application to the local authority. You may not be aware that he is a director, and you are not expected to have to ask about the business affairs of your relatives or acquaintances simply because you are a councillor. However, you would need to declare an interest as soon as you became aware.

A reasonable member of the public would expect you to know of certain interests of course, so it is, for example, reasonable that you would be expected to know your daughter’s address or job but not necessarily any shareholdings she might have. While it is therefore your decision as to whether or not to declare an interest, you should always consider how it might seem to a reasonable person and if in doubt always seek advice from the monitoring officer.

Do I always have to withdraw if I have an ‘other registerable interest’ or a non-registerable interest to declare?

Where you have declared a DPI the Localism Act says you must always withdraw from participation unless you have a dispensation.

If the matter is an ‘other registerable interest’ or a non-registerable interest you must always withdraw from participation where the matter directly relates to that interest unless you have a dispensation.

If it is something which affects the financial interest or wellbeing of that interest you are asked to declare it and the Code then asks you to apply a two-part test before considering whether to participate in any discussion and/or vote:

1. Does the matter affect the interest more than it affects the majority of people in the area to which the business relates?
For example, if a major development affects the settlement where your sister lives and your sister would be no more affected than anybody else – for example, she lives at the other end of the settlement rather than next door to the development, the answer would be no. If the answer is yes, you then ask:
2. Would a reasonable member of the public knowing all the facts believe that it would affect your judgment of the wider public interest?

This is similar to the test for bias (*see guidance on predetermination and bias in Part 2*) and if the answer is yes to that question then you must not take part in the meeting.

You help to run a food bank and are considering a motion to investigate the causes of poverty. A reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are over 65 and are taking part in a discussion about provisions for older people. You would be more affected than the majority, but a reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are discussing closure of the local authority-run home where your elderly parent lives. A reasonable member of the public would think that fact would affect your view of the wider public interest because of the direct effect on your parent.

What does ‘withdraw from the meeting’ mean?

When you withdraw from the meeting that means you must not be present in the room during the discussion or vote on the matter. If the public are allowed to speak at the meeting then you would be granted the same speaking rights as the public and would need to comply with the same rules – for example, giving notice in advance or abiding by time limits. However, unlike the public you would then withdraw once you had spoken.

This would be true at a committee meeting, for example, even if you are not a member of the committee but are simply attending as a member of the public. By staying in the room, even though you are not permitted to speak or vote, it is a long-held doctrine of case law that a councillor may still influence the decision or might gather information which would help in the furtherance of his or her interest. It is therefore in the public interest that a councillor, after having made any representations, should withdraw from the room, and explain why they are withdrawing.

These rules would apply to virtual meetings as they would to physical meetings. For example, after having spoken you should turn off your microphone and camera and may be moved to a 'virtual waiting room' while the item is discussed.

Executive decisions

Where you are an executive member you should follow the same rules as above when considering a matter collectively – that is you should not take part in the decision where you have an interest applying the same rules as apply to other meetings above.

Where you have delegated decision-making power, you should not exercise that delegation in relation to matters where you have a disclosable pecuniary interest or another type of interest which would debar you from taking part in a meeting. Instead you should ask the executive to take the decision collectively without your participation.

Where you have been delegated non-executive powers under s.236 of the Local Government and Public Housing Act 2007 you should similarly follow this approach and your local authority may need to make that clear in its code if it is using that power.

Dispensations

Wherever you have an interest the code allows you to apply for a dispensation. The Localism Act sets out arrangements for applying for a dispensation where you have a DPI but is silent about dispensations for other types of interest as they are not statutory interests. A similar process should however be set out in your constitution or Dispensation Policy for ORIs and NRIs.

A dispensation must be applied for in writing to the 'Proper Officer' (the monitoring officer or, in the case of a parish council, the clerk) in good time before the relevant meeting and will be considered according to the local authority's scheme of delegation for considering a dispensation. The circumstances whereby a dispensation may be granted are where -

1. It is considered that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
2. It is considered that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
3. That the authority considers that the dispensation is in the interests of persons living in the authority's area.
4. That the authority considers that it is otherwise appropriate to grant a dispensation.

What is a 'sensitive interest'?

There are circumstances set out in the Localism Act where you do not need to put an interest on the public register or declare the nature of an interest at a meeting although you would have to declare in general terms that you have an interest. These are so-called 'sensitive interests'.

An interest will be a sensitive interest if the two following conditions apply: (a) That you have an interest (whether or not a DPI); and

(b) the nature of the interest is such that you and the monitoring officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.

Where it is decided that an interest is a "sensitive interest" you must inform the monitoring officer of the interest so that a record is kept but it will be excluded from published versions of the register. The monitoring officer may state on the register that the member has an interest the details of which are excluded under that particular section.

Where the sensitive interest crops up in a meeting the usual rules relating to declaration will apply except that you will only be required to disclose that you hold an interest in the matter under discussion but do not have to say what that interest is. The Localism Act sets out the scheme where the DPI is a sensitive interest. Your local authority procedures should allow for similar arrangements for other registerable or declarable interests.

For example, if your sister has been subject to domestic violence such that the perpetrator has been served with a Domestic Violence Protection Order you would not be expected to disclose your sister's address to a meeting.

What do I do if I need advice?

If you are unsure as to whether you have an interest to declare you should always seek advice from the monitoring officer (or the clerk if you are a parish councillor).

The Golden Rule is be safe –seek advice if in doubt before you act.

No.	TYPE	SPEAK*	VOTE	STAY	EXAMPLE	COMMENTS
1	DPI	N	N	N	Awarding a contract to your own company Planning application for your property Resident parking zone includes your house	<i>Directly relates to DPI-foreseeable-narrow-criminal</i>
2a	ORI	If public allowed to	N	N	Awarding/withdrawing grant funding to a body of which you are a member e.g. village hall Granting planning permission to a body of which you are a member	<i>Directly relates to finances-foreseeable-narrow-can "address" meeting if public can do, but not take part in discussion.</i>
2b	ORI	Test	Test	Test	Awarding grant funding to a body other than the body of which you are a member e.g. competitor to village hall	<i>Affects finances or wellbeing-test (1) greater than majority of inhabitants and (2) reasonable public-affect view of public interest</i>
3a	NRI	If public allowed to	N	N	Determining an application submitted by your sister or your neighbour for a dog breeding licence Partner with free parking permit and policy review decision to be made Councillor objects in private capacity to neighbours planning application cannot sit on PC as statutory consultee	<i>Directly relates to finances of you, partner (not a DPI)-a relative or close associate-Unforeseeable- can "address" meeting if public can do, but not take part in discussion.</i>
3b	NRI	Test	Test	Test	Application for housing development on land near to partners business property Your neighbour applies for planning permission	<i>Affects finances or well-being-test 1) greater than majority of inhabitants and (2) reasonable public-affect view of public interest</i>
2b/3b	NRI	Test	Test	Test	Road works noise outside your house Odours from nearby refuse tip ASB from rough sleepers housed in B+B's nearby	<i>May not affect finances but Well-being=quality of life – apply 2-stage test</i>

*speak-take part in discussion, as opposed to addressing a public meeting as a member of the public where others can also address the meeting

Proximity in personal relationship and in physical proximity are often important factors in determining ability to speak and/or vote.

Bias and Predetermination

Bias and predetermination are not explicitly mentioned in the Code of Conduct. The code provisions on declarations of interest are about ensuring you do not take decisions where you or those close to you stand to lose or gain improperly. **(See guidance on declarations of interest in Part 2)** [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#part-2-general-obligations-under-the-code-of-conduct>]

There is however a separate concept in law dealing with bias and predetermination which exists to ensure that decisions are taken solely in the public interest rather than to further private interests.

Both the courts and legislation recognise that elected councillors are entitled, and indeed expected, to have and to have expressed their views on a subject to be decided upon by the local authority. In law, there is no pretence that such democratically accountable decision-makers are intended to be independent and impartial as if they were judges or quasi-judges.

Nonetheless, decisions of public authorities do involve consideration of circumstances where a decision-maker must not act in a way that goes to the appearance of having a closed mind and pre-determining a decision before they have all of the evidence before them and where they have to act fairly. Breaches of the rules of natural justice in these circumstances have and do continue to result in decisions of local authorities being successfully challenged in the courts. These issues are complex, and advice should be sought and given in the various situations that come up, which is why there are no direct paragraphs of the code covering this, although it does overlap with the rules on declarations of interest.

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct, but councillors need to be clear that they are not biased or predetermined going into the decision-making process. Otherwise the decision is at risk of being challenged on appeal or in the Courts. To quote a leading judgment in this field "All councillors elected to serve on local councils have to be scrupulous in their duties, search their consciences and consider carefully the propriety of attending meetings and taking part in decisions which may give rise to an appearance of bias even though their actions are above reproach." [1]

The rules against bias say that there are three distinct elements.

The first seeks accuracy in public decision-making.

The second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal strong feelings they may have had in advance of making the decision.

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that justice should not only be done but should manifestly and undoubtedly be seen to be done.

To varying degrees, these "requirements" might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: "automatic" (or "presumed") bias, "actual" bias, and "apparent" bias.

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

The rationale behind "automatic" or "presumed" bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased *in fact*. In these circumstances you should not participate in the discussion or vote on the issue. These are covered by the code's requirement to declare certain interests and withdraw from participation. **(see guidance on declaration of interests in Part 3)**. [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest>]

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

Predetermination

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

Predetermination at a meeting can be manifested in a number of ways. It is not just about what you might say, for example, but it may be shown by body language, tone of voice or overly-hostile lines of questioning for example.

You are therefore entitled to have a predisposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind and demonstrate that to the meeting by your behaviour, able to take account of all of the evidence and make your decision on the day.

How can bias or predetermination arise?

The following are some of the potential situations in which predetermination or bias could arise.

Connection with someone affected by a decision

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

Examples

The complaint alleged that a councillor had behaved in a disrespectful and harassing manner towards two fellow female councillors and officers. It was established that the councillor had made unwarranted and inappropriate physical contact with the councillors and officers at an official event and had also made remarks towards the officers which were patronising and demeaning. The councillor was found to be in breach of the Code of Conduct.

A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a councillor panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and is not involved with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.

Improper involvement of someone with an interest in the outcome

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

Examples

A local authority receives an application to modify the Definitive Map of public rights of way. A panel of councillors are given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

Prior involvement

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.

If the councillor is merely seeking to lobby a public meeting at which the decision is taking place but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

Examples

A local authority appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the local authority's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

A developer entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator had already been granted. Following local elections there is a change in the composition and political control of the local authority. After pressure from new councillors who have campaigned against the incinerator and a full debate, the local authority's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The local authority's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

What do I do if I need advice?

If you are unsure as to whether your views or any action you have previously taken may amount to predetermination you should always seek advice from the monitoring officer (or the clerk if you are a parish councillor).

The Golden Rule is be safe –seek advice if in doubt before you act.

Appendix 1 - Interests Flowchart

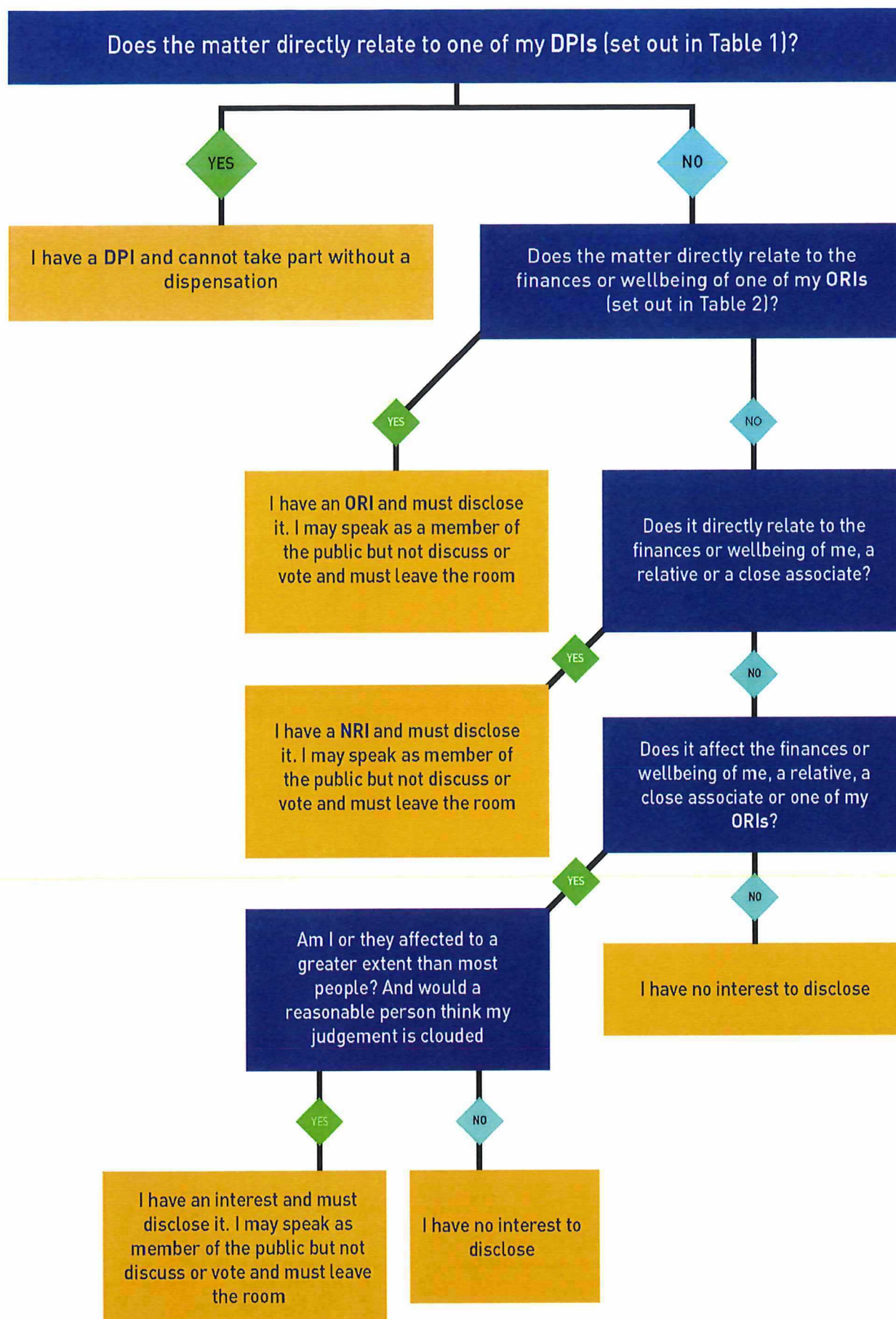
Interests Flowchart

The flowchart below gives a simple guide to declaring an interest under the code.

Appendix 2 - General Principles

General Principles

The Seven Principles of Public Life (also known as the Nolan Principles) outline the ethical standards those working in the public sector are expected to adhere to. The principles apply to all public office holders at all levels including ministers, civil servants, councillors, and local authority officers, as well as private and voluntary organisations delivering services paid for by public funds. The principles are:



Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

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

Openness

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

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

These principles underpin the standards that councillors should uphold and form the basis for the Code of Conduct, where the Principles have been translated into a series of clear rules. While fundamental to the Code of Conduct the principles are not part of the rules of the code and should be used for guidance and interpretation only.