



# Case Review 2010

21 December 2010

# Introduction

This is the third paragraph-by-paragraph analysis of the Code of Conduct issued by Standards have produced this new version at the request of monitoring officers to enable them to have an up-to-date on-line resource. Each paragraph of the revised Code (2007) is explored through a series of questions and answers, followed by tribunal and court case examples wherever possible. It supersedes *The Case Review 2007* and *The Case Review: 2008 Digest* which were sent out in hard copy to all principal authorities. In addition we have added a new section which deals with important cases concerning procedural issues that we hope you will find useful.

And, of course, the law is far from static. Alongside the major shifts resulting from revision of the Code and changes in legislation are the changes which result from case law. It is a consequence of the constantly developing understanding and the evolving interpretation of the Code of Conduct that publications such as this can become outdated. It is our intention to keep *The Case Review*, under constant review to reflect that developing understanding. We will let you know of changes as they are made.

This pdf version is the same as that published on Standards for England's web site on 21 December 2010 and covers cases up to the end of October 2010.

## How to use the Case Review

Each of the 14 paragraphs of the Code has introductory information plus Q&As and - for most paragraphs - case examples.

The final 'Procedural issues' section has four sub-sections containing categories of case examples: Investigations, Hearings, Determinations and Sanctions, and Rules and Procedures.

The 'Decision' link below each case example takes you to the Final Full Decision published on the First-Tier Tribunal website.

## DISCLAIMER

The views expressed in this publication are those of the Standards Board for England and should not be treated as formal legal advice. Further guidance on the interpretation of the Code of Conduct will be obtained from the decisions of the former Adjudication Panel for England now the First-tier Tribunal (Local Government Standards in England) and the courts.

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# Paragraph 1

## Introduction to, and interpretation of, the Code of Conduct

- 1) This Code applies to **you** as a member of an authority.
- 2) You should read this Code together with the general principles prescribed by the Secretary of State
- 3) It is your responsibility to comply with the provisions of this Code.
- 4) In this Code: "meeting" means any meeting of
  - a) the authority;
  - b) the executive of the authority;
  - c) any of the authority's or its executive's committees, subcommittees, joint committees, joint sub-committees, or area committees;
  - d) "member" includes a co-opted member and an appointed member.
- 5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

# Q & A Paragraph 1

## Q1: What is the Code of Conduct?

The Code of Conduct is the Model Code of Conduct that appears in the schedule of the statutory instrument known as The Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159), (“the Order”). It replaces the Model Code of Conduct in The Local Authorities (Model Code of Conduct) (England) Order 2001 (SI 2001/3575).

The Code of Conduct consolidates previous codes for the different types of authority in local government into one document governing the conduct of their members. Unless stated otherwise, references to “members” throughout this publication should always be taken to include co-opted and appointed members as well.

## Q2: Which authorities does the Code of Conduct apply to?

All authorities listed in paragraph 1(2) of the Order described above. The authorities consist of all English and Welsh police authorities and the following English authorities:

- county councils
- district councils
- London borough councils
- parish councils
- the Greater London Authority
- the Metropolitan Police Authority
- the London Fire and Emergency
- Planning Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly
- fire and rescue authorities
- joint authorities
- the Broads Authority
- national park authorities

Members should also note that not every part of the Code applies to every listed authority. It is recommended that members check with their monitoring officers and legal advisers to see if there are any exceptions that apply.

# Q & A Paragraph 1

In particular please note the exceptions in the following paragraphs:

Paragraph 6(c) of the Code is not compulsory for police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, fire rescue authorities and joint authorities. This refers to the Local Authority Code of Publicity which does not apply to these types of authorities unless they choose to adopt it.

Paragraph 7 of the Code, which refers to taking account of advice from statutory officers does not apply to parish councils.

Paragraph 12, which refers to prejudicial interests, does not apply to parish councils unless they choose to adopt it. Also, some paragraphs of the Code only apply to those authorities operating executive arrangements See Paragraph 2(6) of the [Local Authorities \(Model Code of Conduct\) order 2007](#).

## Q3: From what date does the Code of Conduct apply?

Authorities were required to adopt the Code, with or without modifications, by 1 October 2007. If an authority has not adopted the Code by this date they must do so as soon as practicable. In any event, after 1 October 2007 members will automatically be bound by the compulsory provisions of the Code which apply to the type of authority they belong to.

## Q4: Does the term “meeting” apply to informal meetings?

No. This term only applies to meetings of the authority, its executive or its committees or sub-committees. Informal meetings between members and officers, and political group meetings, are not covered by the requirement to declare interests (see APE 0355). However, see APE 0440 where an informal meeting of an authority was held to be a “meeting” for the purposes of the code. The position seems to be that you need to establish whether or not the meeting was of a body set out in paragraph 1(4)(a) to (c) of the Code. Once this is done it does not matter if the meeting is formal or informal. The requirements about declaring interests appear to apply to it.

However, paragraph 6(a) of the Code, which prevents members from using their position improperly, applies at all times. A member who uses pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest will probably fail to comply with paragraph 12(1)(c) of the Code by improperly seeking to influence a decision.

Also a tribunal is unlikely to look into whether or not a meeting has been validly called in accordance with the statutory requirements for doing so. See APE 0402 where the tribunal concluded that the code would apply to members in that situation in any event.

## Q4A: What is the definition of a member?

A member within the meaning of the Code includes members who are elected and co-opted. It will also apply to some appointed members (see question 7).

## Q5: What is the definition of a “co-opted member”?

A co-opted member is defined by Section 49(7) of the Local Government Act 2000 as: any person who is not a member of an authority, but who is a voting member of a committee or

# Q & A Paragraph 1

sub-committee of that authority. This includes independent members of standards committees (see question 6).

Not every member of a committee or subcommittee is entitled to vote. Section 13 of the Local Government and Housing Act 1989 establishes the general principle that members of committees appointed under section 102 of the Local Government Act 1972, who are not members of the local authority, do not generally have any voting rights.

However, a number of exceptions are specified under this rule:

Church and parent governor members of education overview and scrutiny committees have voting rights, as do all members of advisory committees appointed under Section 102(4) of the Local Government Act 1972. They therefore fall within the definition of a co-opted member.

Independent remuneration panels established under Part 4 of the Local Authorities (Members' Allowances) (England) Regulations 2003 (SI 2003/1021) are not considered to be committees or sub-committees of the authority that establishes them. Accordingly, members of an independent remuneration panel fall outside the definition of a co-opted member.

## Q6: Are independent members of standards committees co-opted?

Yes. The term 'independent member' of a standards committee is used as shorthand for those members who are appointed under Section 53(4)(b) of the Local Government Act 2000. All standards committees must include at least one member who is not a member or officer of any relevant authority. Also, where the total number of committee members exceeds three, at least 25% of the committee should be independent members. Further information about the role and make up of standards committees can be found at: <http://www.standardsforengland.gov.uk/Guidance/TheLocalStandardsFramework/Standardscommittees/TheRoleandmake-upofstandardscommittees/>

Standards for England recommends that standards committees should appoint more than one independent member and section 53(4)(b) states that an independent member must chair the committee. Additional restrictions are imposed by the Standards Committee (England) Regulations 2008 (SI 2008/1085).

The term 'independent member' is sometimes used to refer to politically independent elected members. Therefore there is the potential for the two meanings to become confused. However, for the purposes of the Case Review the expression refers to members of a standards committee who meet the requirements of section 53(4)(b) above and regulation 5 of the Standards Committee (England) Regulations 2008 (SI 2008/1085).

Some relevant authorities include appointed as well as elected members of local authorities. For example, police authorities have independent members who are not elected but appointed through a local selection process.

Standards committee independent members can be independent members of more than one authority's standards committee. Paragraph 5(3) of the Standards Committee (England) Regulations 2008 (SI 2008/1085) specifically allows independent members of one authority to be appointed as independent members of another as long as they meet the requirements of the regulations.

# Q & A Paragraph 1

## Q7: What is the definition of an “appointed member”?

An appointed member is generally anyone who is not subject to the requirements of Section 83 of the Local Government Act 1972. This section states that people who have been elected must make a declaration accepting the office to which they have been elected, in addition to giving a written undertaking to observe the Code.

Appointed members fall within Section 52(3) of the Local Government Act 2000, an example being a member who is appointed to a police authority. Appointed members may also fall within the definition of a co-opted member.

The terms ‘appointment’ and ‘co-option’ should be used carefully when referring to parish councils, as they may carry different meanings under the Local Government Act 2000 and election legislation (see Question 8). While some appointments to parish councils may be covered by Section 83 of the Local Government Act 1972, some may not.

Under section 76 of the Local Government and Public Involvement in Health Act 2007, a new power for parish councils to “appoint persons to be councillors of the council” exists but is not yet in force. The section allows the Secretary of State to make regulations about whether or not the Code would apply to these councillors.

# Case examples

## Paragraph 1

### APE 0355

The Adjudication Panel for England (APE), as a preliminary issue, had to decide if meetings of the “Development Plans Policy Project Group” were meetings for the purposes of the code. The APE decided that they were not.

The Tribunal reasoned that it was perfectly proper for an authority to set up either a working party or committee or sub-committee to advise it on any matter it saw fit. Generally the authority’s subjective intention would determine the issue:

“Where the manifest intention of the local authority was to create a working party that should be decisive unless there was something unlawful behind the intention.” – R. v Warwickshire District Council ex p Bailey [1991] COD 284.

### [Decision](#)

### APE 0402

The appellants questioned whether the town council meetings at which they were accused of breaching the Code complied with the statutory requirements for the calling of such meetings and thus whether the meetings can be considered meetings of the council. In the view of the appeals tribunal, it was irrelevant to the issues before them whether the meetings were properly called. Those attending thought that the meetings were properly called and business of the council was being transacted. In their view, even if it had been clear to all that the meetings were not official council meetings it would not have affected the application of the Code which applies to councillors when carrying out their role as councillors. There was no doubt that the appellants’ actions were seen by them and the others involved as directly about Council business and the running of the Council.

### [Decision](#)

### APE 0440

This case suggests that the need to declare interests may apply at informal meetings of an authority or its committees. A planning application was to be discussed at a meeting called by the parish council to which the public were specifically invited.

The following factors led the Tribunal to the conclusion that this was a correctly constituted meeting of the council to discuss council business. It was, therefore, properly described as falling within the definition of “any meeting of the authority” in paragraph 1(4)(a) of the code. Therefore, members were required to consider whether or not they had any interests that needed to be declared.

- 1) The chairman of the parish instructed the parish clerk to call the meeting.
- 2) Acting upon that instruction the parish clerk drew up a notice to be displayed publicly on two parish notice boards and in the village shop.
- 3) This notice was also sent to all elected members.
- 4) As well as referring to a “Parish Council Public Meeting” it also said that the council was holding a public meeting to “discuss and hear residents opinions” about a

# Case examples

## Paragraph 1

planning application to build a new town of 2600 dwellings for 6000 people and to expand a business park to 2000 workers.

- 5) Inclusion of the wording 'to discuss' the application makes it clear to the public that this meeting was to conduct the business of the council rather than have a public, non-council led, meeting.
- 6) That notice had the name and designation of the Chairman at the bottom as the person calling the meeting.
- 7) The fact that it was displayed on the official parish notice boards, gave further credence to this being an official notification from the parish council to members of the local community as a council-led meeting.
- 8) Legislation does not allow the chairman to convene a non-council led public meeting of her own accord. A resolution of the parish council would be required beforehand to give authority for such a meeting. [Note: However, Para 15, Sch. 12 Local Government Act 1972 allows the chairman of a parish council to call a parish meeting].
- 9) All councillors chose to attend. The chairman and parish clerk were seated at a table at the front of the hall with the councillors sat in a 'U' shape either side, facing the audience. Moreover, councillors responded to questions from the public. This gave further support to the impression that this was a meeting discussing council business.
- 10) The notice of the meeting was dated so as to meet the legislative requirements for notice of a parish council meeting.

### Decision

# Paragraph 2

## Scope

- 1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
  - a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - b) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.
- 2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- 4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- 5) Where you act as a representative of your authority:
  - a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's Code of Conduct; or
  - b) on any other body, you must, when acting for that other body, comply with your authority's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

# Q & A Paragraph 2

## Q8: Who does the Code of Conduct apply to?

The Code applies to all members including co-opted members and appointed members of relevant authorities if either one of the following applies:

- They are elected members and so have signed their declaration of office, which incorporates a written undertaking to observe the Code.
- They are not elected but are co-opted members or appointed members who have given a written undertaking to observe the Code and who are allowed to vote on issues.

This is due to the combined effect of Section 52 of the Local Government Act 2000 and Section 83 of the Local Government Act 1972, and any orders made under those acts. Failure to follow the requirements of this legislation creates either a vacancy in office for elected members or an inability to act in office for other members.

Even if an authority fails to adopt a code of conduct within the six month statutory time-limit for doing so the mandatory provisions of the model code will apply to its members by virtue of section 51(5)(b) of the Local Government Act 2000.

## Q9: When does the Code of Conduct apply?

Most of the Code's provisions only apply to activities performed whenever members act in an official capacity. This means whenever members conduct the business of their authority, or act, claim to act or give the impression they are acting in their official capacity or are representing their authority.

However, three paragraphs also apply at any time where their behaviour has led to a criminal conviction (but see the note below):

- Paragraph 3(2)(c) (intimidation of certain persons in relation to an allegation under the Code).
- Paragraph 5 (disrepute).
- Paragraph 6(a) (improperly confer or secure an advantage or disadvantage).

Otherwise the Code does not affect a member's private life.

Whether a member has been representing an authority or acting in a private capacity is something which must be established because it is crucial to whether or not the code applies at all. Ideally this will be established when assessing a complaint. However, sometimes it will only become clear during an investigation.

# Q & A Paragraph 2

**Note:** unless there is Parliamentary approval for amendments to Section 52 of the Local Government Act 2000, the Code does not apply to conduct outside of the functions performed as a member. Only activities linked to the functions of a member's office will be covered by the Code. Only if legislative amendments are passed, will the Code also apply to criminal activity which has led to a conviction, whether or not it is linked to a member's office.

Although only activities linked to the functions of a member's office are covered by the Code if what they do is disreputable a member cannot argue that by misusing their office they are not acting as a councillor and are, therefore, not caught by the provisions of the Code. So, a member who uses a council computer provided to him for council use but who uses it to download child pornography during his private time cannot escape the scope of the Code by arguing that he was not acting as a councillor when he did so.

The Code itself does not provide any further guidance on official capacity (but see development in case decisions in this area referred to below). However, there are circumstances when it is clear that the Code operates. These include any meetings of the authority, its executive or any of its committees or sub-committees. Participating in such meetings plainly involves carrying out the business of the authority. When an elected member exercises powers delegated to them as a member of the authority's executive, or holds a surgery for residents of their ward, the member is clearly performing the business of the office to which they have been elected. Members' face-to-face dealings with officers about the business of the authority will almost always mean they are conducting the business of their office under paragraph 2(1)(a) of the Code.

Similarly, members of police or fire authorities will be conducting the business of their office when they attend formal meetings with police or fire officers, or make formal visits to police or fire stations.

The scope of representing an authority is potentially very wide. Standards for England believes that this will cover situations where a member is appointed or nominated by their authority to another body, such as a board of directors or trustees.

Members will need to distinguish between occasions where they are invited to a meeting or function as an individual, and those where they are invited because of their position as a member of the authority.

In the latter situation, they will be acting as a representative of the authority. Borderline situations may arise in relation to political events, where it might not be clear whether a member's presence relates to their position within a political party or to their membership of the authority.

Any investigation will need to establish who invited a member to be there, in what capacity that invitation was extended and for what purpose. The view of the person sending the invitation will be of primary importance but the member's view will also be relevant. It is possible to invite a member to attend an event but that does not necessarily mean that they are being asked to attend as a councillor.

# Q & A Paragraph 2

The fact that an invitation is made to a person who is a councillor using that title does not necessarily mean that the invitation is extended to them in that capacity. Often it will. However, it will be important to understand the intentions of the person extending the invitation.

When a member attends training put on by the council the Code will apply to them during the training session.

## **Q9A: Does the Code apply to a member when they are suspended?**

A suspended member continues to be a member of the authority. However, they cannot exercise any of the functions or responsibilities of membership.

It is the view of Standards for England that the general rule is that the Code does not normally apply to a member who has been suspended unless they purport to act as a representative of the authority.

The Code will normally apply to a member who has been partially suspended but not for the functions they have been suspended from unless they purport to carry out those functions.

The exceptions to the general rule are paragraphs 3(2)(c), 5 and 6(a) of the model code which will apply as they do to other members [see Question 9].

## **Q10: Are criminal offences committed before becoming a member covered by the Code of Conduct?**

Yes, if the member is convicted after they have taken office. However, see the note to Question 9.

## **Q11: Do private discussions about authority business come under “official capacity”?**

Standards for England is likely to view any private discussion of authority business, either with members or with the authority’s officers, as carrying out the business of the member’s office.

Only where there is very clear evidence that the conversation was not concerned with performing authority business will it fall outside paragraph 2(1) of the Code of Conduct.

## **Q11A: Does the Code apply to blogs, social networking sites, twitter, etc?**

It is unlikely that private blogging will fall within the scope of the Code. However when a member puts content onto a website provided to them by their authority which they would not have got hold of if they had not been a councillor then they will almost always give the impression that they are acting as a councillor when they post information.

Similarly when a member has a personal blog and puts content on there which they could only have obtained as a councillor, again they may give the impression that they are acting as a councillor. Some members seek to put a disclaimer on their blog to the effect that

# Q & A Paragraph 2

everything on there is put there in a personal capacity. Nevertheless it may be possible in a personal blog to give the impression that they are acting as a councillor. Also, a councillor cannot discuss council business on a personal blog and/or make gratuitously offensive remarks about other councillors and then claim to be doing so in a private capacity.

It is important to draw a distinction between comments on blogs about council business and comments about general political issues. The context is important and the decision as to whether the Code is engaged is fact-sensitive and case-specific. For example calling all members of a particular political party "a bunch of bast\*\*\*s" is likely to be viewed by the SfE as an opinion about the political party which, on a personal blog, would not engage the Code of Conduct. However, saying "all the [name of political party] members on xxxx council are a bunch of bast\*\*\*s" is more likely to engage the Code.

The issue of anonymous satirical websites raises other issues. The first point to consider is whether it can be proved that the site content is put on there by a councillor. Assuming that is established on a balance of probabilities then it is necessary to show that the member acted, claimed to act or gave the impression that they were acting as a councillor when they posted the offending comments. If a member puts content on the site which they could only have obtained as a councillor it may be possible to argue that they have given the impression that they were acting as a councillor.

If councillors go on to a web forum and identify themselves as councillors then it is more likely that the Code will apply to them when they make postings. If they put content on the site which they could only have obtained as a councillor it is possible to argue that they have given the impression that they were acting as a councillor even if they did not identify themselves as such at the time they made the posting.

## **Q11B: Does the Code of Conduct apply when you do not appear to act as a member but do misuse your office?**

Whenever members

- 1) conduct the business of their authority, or
- 2) act, claim to act or give the impression they are acting in their official capacity or are representing their authority the Code applies to them.

It is usually fairly easy to spot when the first limb applies. However, the second can be more problematic.

As stated at Question 9, only activities linked to the functions of a member's office are covered by the Code. This is because the effect of section 52 of the Local Government Act 2000 is to restrict the application of the code to members only when they are performing the functions of their office. However, a member cannot argue that by misusing their office they are not performing the functions of their office and therefore, the provisions of the Code do not apply.

In *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin) Mr Justice Collins made the following comments:

# Q & A Paragraph 2

"If the words 'in performing his functions' are applied literally, it may be said that such misuse, and other misconduct which is closely linked to his position as such may not be covered. It seems to me that the expression should be construed so as to apply to a member who is using his position in doing or saying whatever is said to amount to misconduct. It is obviously impossible for a member who was acting in his official capacity to argue that by acting improperly he was not performing his functions. Such a construction would emasculate the system set up by Parliament.

Where a member is not acting in his official capacity (and official capacity will include anything done in dealing with staff, when representing the council, in dealing with constituents' problems and so on), he will still be covered by the Code if he misuses his position as a member. That link with his membership of the authority in question is in my view needed.

It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the Code if the offending had nothing to do with his position as a councillor."

So, a member who is provided with a council computer to use for council business but who uses it to download child pornography during his private time cannot escape the scope of the Code by arguing that he was not acting as a councillor when he did so. Similarly where councillors seek to misuse their status such as, for example, where a councillor in dispute with a neighbour about their planning application threatens to speak to colleagues who control the planning committee this will come within the scope of the Code.

## **Q12: Could the Code of Conduct apply when the member is abroad?**

Yes. It is quite possible that the member could be acting as a representative of the authority on an official visit abroad.

## **Q13: When does the Code of Conduct cease to apply?**

The Code no longer applies when members leave office, either by resignation, disqualification or the expiry of their term of office.

## **Q14: Could a conflict ever arise for members between their duty to comply with the Code and their lawful obligations to a body on which they serve as representatives of the authority?**

In the view of Standards for England this rarely occurs. Members who represent their authority on other bodies – except for relevant authorities – are expected to comply with the general obligations contained in Part 1 of the Code. However, the detailed provisions about the disclosure of interests at authority meetings in Part 2 of the Code (paragraphs 9(1) and 12(1)(a) of the Code) do not apply when members attend meetings of other bodies on which they serve. These bodies are likely to have their own rules about such matters.

Similarly, members are not required to fill out a separate register of interests form for bodies to which they have been appointed. This is unless the body is a "relevant authority" as defined in Section 49(6) of the Local Government Act 2000 or unless that body has its own registration requirements. However, a member who has a prejudicial interest about a matter being considered by another body is still bound by the obligation under paragraph 12(1)(c) of

# Q & A Paragraph 2

the Code not to “seek improperly to influence a decision about that matter”. See Paragraph 12.

Paragraph 2(5)(b) is relevant where the Code’s provisions conflict with the legal obligations of company directors or the trustees of charitable trusts. It provides that the legal obligations override the Code. For further information about the meaning of ‘representative’, please see Question 9.

# Case examples

## Paragraph 2

### Within the scope of the Code

#### APE 0389

This case illustrated the application of the Code when a member is carrying out an activity, which is not part of their normal duties as a councillor.

In this case, the Adjudication Panel for England had to consider the test previously set out by Mr Justice Collins in the High Court case concerning the former Mayor of London, Ken Livingstone.

The Adjudication Panel decided that the councillor was subject to the Code when he used a council computer to access indecent images of children. This case was considered in the context of paragraphs 4 and 5 of the 2001 Code relating to disrepute and misuse of resources.

#### [Decision](#)

#### APE 0421

The Appellant argued that she was not acting in her official capacity as all her comments on an internet newspaper forum were made in her private time and all using the pseudonym of “Indie”.

The Appeals Tribunal accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was, or gave the impression that she was, “acting in the role of councillor”. This was fact-sensitive and would very much depend on the content of the postings.

It was noted that the member had used a pseudonym, and that she stated in at least one of the postings that she was on the forum as a resident who just happened to be a councillor. However, taking the contents of the postings on the forum as a whole the Appeals Tribunal concluded that the Appellant did give the impression that she was acting in the role of councillor and thus representing the council.

#### [Decision](#)

#### APE 0455

This case concerned an allegation that the former councillor had failed to comply with paragraphs 5 and 6(b) of the council’s Code by improperly using a council laptop supplied to him for the purpose of carrying out his responsibilities as a councillor and that material of a highly offensive nature was discovered on it. Clearly viewing offensive material is not a function of a councillor, nor does doing so give the impression that one is representing the council. Nevertheless the tribunal took the view that the Code applied and that a member of the public knowing that the councillor had not only used, but allowed his family and relatives to use, his council owned laptop and the purpose for which the laptop was used, would have, in the tribunal’s opinion, grave concerns about his judgement, honesty and integrity. These

# Case examples

## Paragraph 2

are fundamental principles which govern the conduct of all members and which were seriously undermined in this case.

### [Decision](#)

#### APE 0503

In this case the member was taken to task for comments made in a newsletter and on his Twitter site. He claimed that he was not acting in his official capacity when making the comments. The newsletter was described as a community newsletter. It consisted of four pages and was overwhelmingly written in the first person as if by the member. The member operated a 'Twitter' site in which he referred to himself by the title "Councillor" and where he regularly discussed council issues. He also operated a separate site, using his name followed by a number, where the title 'Councillor' did not appear. In both the newsletter content complained about and the Twitter site postings he was found to have been acting in his official capacity. Only part of the newsletter content was found to have constituted a breach of the Code.

### [Decision](#)

#### LGS/2010/0513

One issue considered in this appeal was whether or not the member was acting in his official capacity when the behaviour which led to the complaint occurred. The standards committee found that during, or immediately after, a couple of evening music events about a month apart the member had kicked a youth, used behaviour to him that was inappropriate and irresponsible and engaged in inappropriate 'banter' between a councillor and a 16 year old. He had also slapped another youth on the bottom and made inappropriate comments about tattoos to her.

The tribunal considered the member was acting in his official capacity at the relevant times. As a starting point the tribunal considered the case of *Livingstone v APE*. The facts there were that the Mayor of London, Ken Livingstone, had been hosting a reception at City Hall. As he left City Hall when the reception was ended, as he was walking away, he was confronted by a reporter and a conversation took place. A key issue in the case was whether at the time the conversation took place he was performing his official functions: the court determined that on the facts he was not.

The Investigating Officer found that in his opinion the member "liked it to be known that he was a Town Councillor/Mayor and repeatedly if not constantly gave the impression that he was acting as a Town Councillor/Mayor". This is also the firm impression that the tribunal gained from the documents before it. The tribunal considered that the facts in this appeal could clearly be distinguished from those in *Livingstone*. This was a case where the member's public and private life were intertwined, unlike in the *Livingstone* case where the Mayor had concluded his public function and was walking away.

The tribunal concluded that the member acted or gave the impression that he was acting as a representative of the Town Council when he attended the music events in question. The events affecting the second youth occurred when the group of people running the music event moved on to the pub to have a "debrief" after the event. The question is whether

# Case examples

## Paragraph 2

moving to the pub was a change of circumstances such that the member was no longer giving the impression that he was a representative of the Council. The tribunal considered this carefully but concluded that the events at the pub could not clearly be separated from the music event. The fact that the discussion about the event had moved from the event hall to the pub was incidental. The same people were involved and the motive and reason for being there were the same. It was not like the facts in the Livingstone case where the councillor had finished official business and was going home. The tribunal therefore considered that the member was acting in his official capacity in relation to the incident. The tribunal confirmed the sanction of suspension for a two month period.

### [Decision](#)

## Outside the scope of the Code

### APE 0401

The member appealed against a standards committee finding under the 2001 Code which does not include the provision about giving the impression of acting as a councillor. The standards committee had found that the member had failed to treat others with respect and brought his office or authority into disrepute. This was by using his position to gain entry to a council-funded organisation and then:

- demanding information from staff
- becoming aggressive
- threatening staff's employment
- refusing to leave until senior staff threatened to call the police

The Adjudication Panel for England decided that the standards committee had failed to address whether the member's conduct was undertaken in an official capacity.

The Tribunal found that the member was not on council business and there was no apparent relationship between the purpose of his visit and any relevant function of the council. However, by so clearly identifying himself as a councillor, his conduct had come within paragraph 4 of the Code [now paragraph 5] and therefore the finding of a breach was upheld.

### [Decision](#)

### APE 0428

This was an appeal against the decision of a standards committee which had been predicated on finding that the Appellant had, at the material time been acting in her capacity as a councillor.

Emails passed between the Appellant and the complainant. All of them appeared to have been instigated by the complainant and contained what the tribunal described as "a curious mixture of personal and business issues".

# Case examples

## Paragraph 2

Of particular importance in this case were the emails relating to a website and the possibility of setting up an alternative to it. The website appeared not to be published or sanctioned by the council but promoted discussion on matters of local interest which might be about council business and might also be considered to be aspects of local political activism. It is in relation to this publication that the email exchange which led to the complaint related.

The tribunal found that there could be no reasonable finding that correspondence relative to a website which was not produced or sanctioned by the council related to council business.

### [Decision](#)

▶ [Back to case examples](#)

### APE 0458

The member appealed against a standards committee finding that there had been a breach of paragraphs 3(1) and 5 of the Code of Conduct regarding comments made by the appellant in a newsletter he produced. The newsletter consisted of 24 pages which contained many advertisements and a wide variety of articles, some of which concerned council business.

The Adjudication Panel found in favour of the appellant for the following reasons:

- the appellant is a journalist; the journal, which he publishes and edits, is not part of the business of the borough council
- in the journal the appellant neither claims nor gives the impression of acting as a representative of the council
- while the appellant's name frequently appears within the journal it is (according to its imprint) "Published for fun" and a member of the public would be in no doubt that the publication of the journal was not a matter which was the business of the authority
- the dedication of many councillors to activities in public life means that often their social and professional lives are shaped by their roles as councillors and in turn shape how they approach those activities. However while they may always be conscious of their office as councillor and carry out a wide range of activities in which that is a factor in their thinking, no reasonable observer would conclude that they are carrying out the business of the office of councillor a test which, in the light of the decision in Livingstone, should be narrowly construed.

### [Decision](#)

### APE 0490

The member appealed against a standards committee finding that there had been a breach of paragraph 3(1) of the Code of Conduct in the use of the swear word "bloody" in an email. The member appealed on the grounds that he sent the email to the complainant in his private capacity.

# Case examples

## Paragraph 2

The Adjudication Panel found in favour of the appellant.

The Tribunal concluded that the appellant was not conducting the business of the district council or the office of the district council for the following reason:

- The email referred to the publication of a ward magazine which the parish council had no involvement in. Although the district council initially helped fund the printing costs, there is nothing in the magazine suggesting that it is connected to the district council.

The Tribunal concluded that the appellant was not acting, claiming to act or giving the impression that he was acting as a representative of the district council for the following reasons:

- The appellant uses first names in the email
- The main body of the email refers to the distribution of the magazine without reference to the district council
- Although the appellant used his district council email address and copied his response to other district councillors, this, on its own and given the other facts, cannot be considered to give the impression that the appellant was acting as a representative of the council. Although he copied the email to other district councillors, he also copied it to a number of other people who were not district councillors

Although the email included references to funding and the Appellant being the project leader, given the tone and content of the rest of the email it did not give the impression that it was from a district councillor. The content of the email was addressed mainly to delivery of the community magazine and did not lead the reader to consider it was sent on behalf of the district council.

### [Decision](#)

# Paragraph 3

## Respect, equality, bullying, intimidation and impartiality of officers

- 1) You must treat others with respect.
- 2) You must not:
  - a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - b) bully any person;
  - c) intimidate or attempt to intimidate any person who is or is likely to be:
    - i) a complainant,
    - ii) a witness, or
    - iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
  - d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- 3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

**Please note:** each point in paragraph 3 is dealt with separately in this section.

# Paragraph 3 (1)

## Respect

Paragraph 3(1) You must treat others with respect.

**Note:** Paragraph 3(1) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through members' arguments and public debate are an essential part of the cut and thrust of political life.

# Q & A Paragraph 3(1)

## Q15: What kinds of conduct are not covered?

A very clear line has to be drawn between the Code of Conduct's requirement of respect for others, including members of the authority with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.

A rule of thumb is expressed in this comparison:

- "You're talking drivell" is likely to be an acceptable expression of disagreement.
- Calling someone a "incompetent moron", on the other hand, is more likely to be a failure to comply with paragraph 3(1).

We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics.

Members should note that an Adjudication Panel for England hearing (APE 0419) has decided that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code.

However, the conduct could be directed against a general class or type of person, none of whom are present to witness it. The same Adjudication Panel hearing decided that in this case, conduct would not be a potential breach of this paragraph of the Code. However, depending on the circumstances, another paragraph of the Code might be engaged.

## Q16: Does this mean members cannot challenge the views or performance of officers?

No. See Question 22.

# Case examples

## Paragraph 3(1)

### APE 0281

A member sent an aggressive and threatening letter about another councillor to members of a rival political group. He did this after a meeting and via the council's email system. He abused and threatened the councillor over the phone two days later, and then assaulted him. He also sent an email in which he referred to councillors as "idiots".

The case tribunal decided that the letter and the email were rude and intemperate and failed to treat others with respect. Also the tribunal decided that the conduct towards the other member was extremely rude and that the threats and violence amounted to failing to treat him with respect. This conduct also brought the member's authority into disrepute.

The case tribunal noted that the member had apologised to the other member and said he had learned from the experience. The tribunal also took into account the fact that the member was a long-serving and committed councillor. He was suspended for a year.

[Decision](#)

### APE 0326

A member persistently refused to obey the chair's rulings at meetings, refused to be quiet when asked, and at two meetings of the council had to be asked to leave by the police. The events took place over a three-month period. He was disqualified for a year.

[Decision](#)

### APE 0362

A member interrupted an interview between a reporter and another member during a break in a council meeting. He steered the reporter out of the room and threatened the member using extremely abusive language. This was seen by others including members of the public. The member immediately apologised for his behaviour. He was censured.

[Decision](#)

### LGS/2010/0497

Disrupting a council meeting to the point of causing the sitting to be suspended might not merit a breach of the Code. However, in this case the councillor persisted even after the cooling-off period that was available as a result of the suspension. That then led to the meeting being adjourned and having to be reconvened. The tribunal took a more serious view of persisting in that way and considered that she brought the Council into disrepute. She was censured and warned that if she appeared again before the tribunal as a result of causing a meeting to be abandoned she could expect a less lenient sanction to be applied.

[Decision](#)

# Case examples

## Paragraph 3(1)

### Freedom of expression:

#### APE 0414 and LGS/2009/0480

In these appeals, the tribunal provided a good summary of the High Court decisions on Article 10 of the European Convention on Human Rights (Freedom of Expression), i.e. whether the Article is engaged and if so what might be convincing and compelling reasons to interfere with the right. In the former case the tribunal found no breach of the Code where the councillor had made criticisms of the planning regime at the council. However, in relation to the Councillor's behaviour towards the parish clerk in the latter case it took the view that the higher level of protection afforded to statements of political opinion etc, was not applicable where the nature of the words and the manner in which they were expressed crossed the line into expressions of personal malice /anger or personal abuse.

[Decision 0414](#)

[Decision 0480](#)

### Officers:

#### APE 0415

The the chairman of the Council introduced a motion to suspend the clerk, without giving 3 clear days notice as required by standing orders, and did not allow a vote as to whether this motion should be dealt with in exempt session. The councillor for this disrespect and other breaches, arising from the same events was suspended from the town council for three months. He was also partially suspended from being a member of the Standards Committee of the responsible authority and from being the town council's Chairman for twelve months.

[Decision](#)

#### APE 0419

The councillor was found to have visited the council offices very frequently and at least 15 times in one month. During those visits he became angry and aggressive to the clerk, invading his personal space. He described the clerk as incompetent on several occasions and in public in front of others, and to a member of staff the clerk managed. The councillor also challenged the clerk's efficiency and effectiveness in public meetings where the press and public were present. The clerk attributed his period of four weeks sickness absence directly to his treatment by the councillor, which the tribunal found was disrespectful. For this and disrespect to other members and bringing the council and his office into disrepute the councillor was disqualified for three years.

[Decision](#)

#### LGS/2009/0483

The councillor had on a number of occasions, both in emails and at council meetings, referred to the chief executive as a liar, a cheat and a hypocrite. He also emailed the

# Case examples

## Paragraph 3(1)

monitoring officer about service complaints, simply instructing him to take certain actions and the intemperate manner in which he did so resulted in his conduct amounting to personal abuse rather than political expression. The tribunal said the words used by the councillor against the two senior officers were not political comments or political opinions. The use of the words liar, hypocrite and cheat to the chief executive was disrespectful and sought to damage his reputation. The councillor had prepared much of what he said at council meetings beforehand and the comments were therefore premeditated. These comments, which questioned the chief executive's honesty, credibility and integrity, were made in a public arena where they would receive maximum publicity and he had no right of reply.

In respect of the monitoring officer the tribunal was also of the view that the councillor treated him with disrespect by referring to him in emails in a derogatory way and questioning his professional abilities and integrity. The councillor's communication with the monitoring officer was regularly copied to members of the public and other staff members which was demeaning and undermining.

The tribunal decided that the councillor's conduct amounted to behaviour which was intimidating, insulting, humiliating and undermining. The councillor was disqualified for twelve months.

[Decision](#)

### LGS/2010/0495

This case concerned how much a senior officer should be prepared to accept robust criticism made in public. In this case the words were personal and highly critical and made in a public arena where the clerk had no right of reply, no opportunity to contradict and where she was largely defenceless. The subject member was suspended for four months or until such time as she apologised to the clerk in a form to be provided by the standards committee.

[Decision](#)

### LGS/2009/0504

This case concerned attacks on the deputy monitoring officer. In suspending the councillor for his breach of the Code the case tribunal said the member had caused harm to the integrity and character of the deputy Monitoring Officer who had been unfairly criticised in pejorative and insensitive language raising doubts in a public arena as to his ability to do his job in circumstances in which he would not have a reasonable opportunity to defend himself and which only marginally failed to cross the threshold into bullying.

[Decision](#)

**Contrast the above cases about officers with the following:**

### APE 0378

A councillor wrote to the chief executive, in rude terms demanding action where she had no authority to do so. The tribunal decided that the member had not shown disrespect to the

# Case examples

## Paragraph 3(1)

chief executive. The tribunal decided that sufficient weight had to be given to the fact that the officer was the chief executive, and it was significant that there was no direct personal attack on that officer.

Conversely, the tribunal did find that there was disrespect shown to a senior police officer. This is because the councillor was disrespectful to him in email correspondence and referred to him by his surname outside of the expected norms of such relationships. This was compounded by the circulation of the offending emails to junior and senior officers within both organisations.

[Decision](#)

### APE 0410

It was alleged that the councillor accused the chief executive of being partial to one political party, called on him to resign and ‘tell the truth.’ The tribunal differentiated between calling for the resignation of the chief executive (that is requiring his accountability) and a personal attack on the post holder, of which there was no evidence. The tribunal found that asking for the truth to be told was not an allegation of lying, but a request for accurate and full information. There was no breach of the Code.

[Decision](#)

## Two contrasting cases on the use of the word liar:

### APE 0427

A councillor said of a member who, at a time was being considered for election as chair of the council, and an employee of the council that they were ‘proven blatant liars’. In relation to the employee there was no reason to refer to her at all in an open public meeting of the council and by referring to her as a liar at the meeting the councillor had failed to treat her with respect. In relation to the other councillor, the tribunal found that the councillor was entitled to a level of freedom to express himself at a time when she was standing for election. The person, who holds the role of chair of the council, should be a person of good reputation, and thus it was appropriate to raise the question of a candidate’s honesty if they were proposed for election. This was a matter of public interest, and the tribunal allowed a substantial degree of protection to him, although the comments he made were not political expression as such. But the language he used was inflammatory and chosen to reignite a known dispute; a tactic chosen to tarnish the election rather than expose the conduct to scrutiny. The councillor resigned on the day of the hearing before the tribunal announced its sanction. To give a clear signal that behaviour designed to disrupt rather than pursue a legitimate public interest was unacceptable the tribunal disqualified the councillor for one year.

[Decision](#)

### APE 0441

The councillor had been the subject of a leaflet published by others which contained untruthful information about him. He said when called on to apologise at a public meeting ‘it

# Case examples

## Paragraph 3(1)

is you who owe the apology as you are the liars. The CPS got it wrong. You are the guilty ones.' The Standards Committee had found this to have been disrespectful. They were concerned about the use of the word 'liar'. The Standards Committee had found that it did not need to consider whether or not the councillor was justified in the use of the word as they considered it to be disrespectful. The tribunal disagreed. They said the Committee should have assessed whether or not the untruths could properly be described as lies by exploring whether or not they were deliberate or negligent falsehoods. If they were, the description 'liars' would have been apt and justifiable, albeit unpleasant. The appeal was allowed, no breach of the Code was found.

[Decision](#)

### Other insults amounting to disrespect:

#### APE 0425

A councillor had inadvertently and under the pressure of barracking and his own strong feelings described the conservative ruling group as 'corrupt'. On appeal this was held to have been disrespectful, and brought his office and the council into disrepute. However the decision of the standards committee not to impose a sanction was upheld.

[Decision](#)

#### APE 0449

A councillor said to another in a council meeting 'in our culture we have a word for you...we have a word that we use and I am sure many in our City will understand...it's coconut. At the end of the day I look at you as that'. The tribunal having found that an apology was made for words uttered on the spur of the moment censured the councillor. This allegation was also subject to a criminal sanction, which at the time of writing is subject to appeal. This allegation was also the subject of criminal proceedings.

[Decision](#)

#### LGS/2009/0477

The tribunal found that in accusing an officer publically by letter widely circulated of "lack of impartiality, objectivity, independence" and of being "biased", he made make a personal attack on the officer's integrity and professionalism. He was for this and other breaches required to provide a written apology to the officer and suspended for a period of six months.

[Decision](#)

#### LGS/2009/0478

The councillor wrote letters which questioned the legality of the clerk's appointment. In these letters he questioned his competence, raised issues about him committing offences amounting to gross misconduct and described him as a "skilled puppet master." He also accused him of making "a fundamental and stupid error." Six members of the public received copies of two of these letters. The tribunal found that the councillor had concerns about the

# Case examples

## Paragraph 3(1)

clerk's performance which he was allowed to express. However, in his correspondence the councillor repeatedly and publicly questioned the competence of the clerk in terms which were insulting and humiliating. The tribunal took the view that it was quite improper for the councillor to criticise and demean the clerk in public correspondence.

The tribunal concluded that the councillor showed intimidating, threatening and humiliating behaviour towards the clerk and that this behaviour also resulted in disrespect being shown, thereby breaching the Code of Conduct. For this and other breaches of the Code the councillor was suspended for a period of six months.

[Decision](#)

### LGS/2009/0480

In this case about disrespect to a parish clerk the tribunal said that the councillor's reliance on qualified privilege and justification in defence of his actions were misconceived in the context of the Code. These are concepts relevant to the law of defamation but which cannot be relied upon to excuse conduct which would otherwise be in breach of the Code.

[Decision](#)

## 'Insults' not amounting to disrespect:

### APE 0399

A tribunal considered the threshold for a failure to treat others with respect. The councillor made comments about the town clerk at a parish meeting saying that an officer found her "difficult to get on with". The councillor added that "this is also the view of many towns' people who say that when they try to contact the town clerk, she is downright rude to them".

The Tribunal considered that the threshold for a failure to treat another with respect has to be set at a level that allows for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council. It should also be set within the context of who was involved in the exchange.

In this case, the comments were opinions of other individuals which the member honestly believed to be true. The member's conduct was not unfair, unreasonable or demeaning to the town clerk and not made in a malicious or bullying manner. The town clerk was very experienced in her dealings with councillors and given her seniority was entirely able to defend her position. Therefore, the tribunal decided that the threshold was not reached

[Decision](#)

### APE 0451

The councillor said 'You know they used to burn witches at the stake for professing to have such abilities.' On appeal from a finding of the standards committee the tribunal found that the words used were not about the other councillor, and therefore there was no disrespect to her.

# Case examples

## Paragraph 3(1)

[Decision](#)

**LGS/2010/0499**

The standards committee decision in relation to breach and suspension were overturned on appeal. The committee had found that this was a repeat of similar behaviour for which the member had recently been suspended for 2 months. The behaviour included sending an email to a constituent who had been a candidate for another political party. The email included the phrase 'lactatious ego trip'. The appeal tribunal found that the tone and words used in the email were not abusive or overtly offensive. Circumstances are relevant in establishing whether it is disrespectful and the circumstances include the character and relationship of the people involved and the behaviour of the person who prompted the email being sent.

[Decision](#)

# Paragraph 3(2)(a)

## Equality

You must not do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006).

# Q & A Paragraph 3(2)(a)

## Q17: What are the “equality enactments”?

The equality enactments outlaw discrimination on the grounds of sex, race, disability, religion or belief, sexual orientation and age. In future these will be known as “protected characteristics.”

Generally, these statutes impose positive duties to eliminate unlawful discrimination and harassment, and promote equality. They also impose specific positive duties on certain authorities and cover a variety of situations. Members should seek advice if they are unsure about the particular nature of the duties of their authority.

### Examples include:

**The equal pay legislation.** This prohibits unjustifiable differences in pay between men and women, and covers most matters normally included in contracts of employment.

The sex discrimination legislation. This relates to discrimination on the grounds of sex or marriage in non-contractual matters such as:

- arrangements concerning recruitment
- offers of employment
- trade union membership
- training transfer
- promotion
- dismissals
- redundancies
- any other treatment not covered by a contract of employment

**The racial discrimination legislation.** This means that local authorities must have due regard to eliminating unlawful discrimination, and to promoting equality of opportunity and good relations between different racial groups. It also creates specific duties associated with carrying out functions and the provision of goods and services.

**The disability discrimination legislation.** This prohibits disability-related discrimination and makes failure to make reasonable adjustments a form of discrimination. Exceptionally it does not prohibit or restrict ‘positive’ discrimination in favour of disabled people.

**The Equality Act 1996.** This creates similar offences to the racial discrimination legislation for discriminatory acts done by reason of a person’s religion or belief, or lack of religion or belief.

**The Equality Act 2010.** This Act reforms and harmonises equality law and restates the greater part of the enactments above relating to discrimination and harassment. It is to be brought into effect over a period of time starting in October 2010.

# Q & A Paragraph 3(2)(a)

## Q18: What would be a breach of the antidiscrimination laws?

Broadly speaking breaches of the various areas of antidiscrimination laws can occur in four main ways. These are:

- Direct discrimination

Direct discrimination occurs when someone is treated less favourably on the grounds of their protected characteristics or a perception that they have those characteristics or are associated with someone who has them.

For example, if a woman was not called for an interview for a chief executive post, despite the fact that she fulfilled the person specification better than any of the men short-listed, it is likely that direct discrimination occurred.

- Indirect discrimination

Indirect discrimination may occur where a requirement or condition has a disadvantageous and disproportionate impact on members of particular groups that are defined by protected characteristics.

Consider a situation where members decide that all applicants for council employment must be six-foot tall. This requirement would have a disproportionate impact on women and members of many racial groups. It would also be unjustified.

- Victimisation

Victimisation occurs if a person is treated less favourably because they have complained about unlawful discrimination or supported someone else who has.

An example would be where a member sought to undermine the employment prospects of an officer, when the officer has supported someone who made an allegation of discrimination against the member.

- Harassment

Harassment occurs where unwanted conduct violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment on grounds of their protected characteristics.

An example would be if officers were subjected to unwanted banter or teasing about their sexual orientation or beliefs.

## Q19: How can members cause their authority to be in breach of anti-discrimination laws?

The Code of Conduct is not intended to stifle democratic debate. Members should always remember that Article 10 of the *Human Rights Act 1998* gives a high level of protection to comments that are genuinely made in the course of political debate, even if most people would find them offensive.

# Q & A Paragraph 3(2)(a)

A member must be careful not to conduct themselves in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders their authority's fulfilment of its positive duties under the equality legislation. Such conduct may cause their authority to breach an equality enactment and lead to a complaint that they have breached this paragraph of the Code.

Merely arguing, or even voting, against a proposal which is aimed at complying with a positive anti-discriminatory duty would not be enough by itself to risk breaking this part of the Code. Simply having a party political position on an issue is unlikely to amount to a breach of this provision because it does not, of itself, involve the council doing anything.

Under the equality legislation, an authority is made liable for any discriminatory acts which a member commits. This will apply where they say or do something in their official capacity in a discriminatory manner.

# Case examples

## Paragraph 3(2)(a)

### APE 0149

This case example concerns a member's behaviour under the previous Code of Conduct and the general duty under Section 71 of the Race Relations Act 1976. The issues raised remain relevant under the revised Code.

In a case before the Adjudication Panel for England, the tribunal considered how the general duty imposed by Section 71 of the Race Relations Act 1976 impacted on the behaviour of a councillor at a training session. He had attended a training seminar about the council's race equality scheme with other members and officers. His conduct was found to have been disrespectful to the trainer.

The tribunal viewed with concern the fact that, rather than acknowledging his initial inappropriate behaviour at the training session, the member chose to repeat it in interviews to the local newspaper and radio station and then to compound it by making a statement to a meeting of the council using offensive terms and language.

The tribunal held that the duty under Section 71 was an important one. It stated that this duty:

"...reflects what a multicultural society expects of a local authority, namely that in exercising its functions, it should have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.

"The tribunal considers that an objective observer would regard it as essential to the good reputation of a local authority that it is seen to be embracing the implications of that duty when acting corporately and also through the individual actions of members and officers.

"As the council's adopted [racial equality scheme] stresses, it provides the means of leading by example, by raising the awareness of the problems and discrimination that ethnic minorities may face; its success is recognised as being dependent on the commitment to making it work. The [racial equality scheme] was adopted shortly before the training session and it was clearly important to the council that the commitment of members and officers was displayed at this early stage."

The member was disqualified from office for three years.

### [Decision](#)

Note: members should be aware that even if this paragraph is not engaged, issues of the reputation of the authority or office of councillor may well arise.

### APE 0378

The tribunal considered whether racist comments can have a political dimension and examined whether they could be afforded the protection of freedom of expression under Article 10.

# Case examples

## Paragraph 3(2)(a)

The councillor made a complaint about planning enforcement, stating that “those wishing to buck the system were usually of ethnic origin”.

The tribunal concluded “that a person is entitled to the extremely high level of protection which the authorities demonstrate must be given to political expression because of its fundamental importance for the maintenance of a democratic society. However, a factual investigation of the nature of the words used is necessary to determine whether they amount to political expression, or whether they are no more than expressions of personal anger and personal abuse”.

The tribunal decided that where a member based expressions of opinion on prejudice against people it would, in the mind of a reasonable person, bring both the office and authority into disrepute. This is not only due to the authority’s statutory duties under anti-discrimination legislation, but also because such attitudes fall far short of what is expected of those holding public office.

### [Decision](#)

### Hypothetical case

This hypothetical case concerns a member’s comments about people with disabilities.

A local authority considered a scheme whereby its leisure centre would provide weekly swimming sessions open only to disabled adults. A member interjected and shouted out, “I could not care less about disabled paralympians. We’ve only got one swimming pool in the entire area, and we can’t afford to have it shut for two hours each week to all the other swimmers in the area!”

If the member had said no more after his first sentence and voted against the plan, this would be a potential breach of the paragraph, as it might cause the council to be in breach of its general duty under the Disability Discrimination Act 1995 (as amended).

However, if the reason for his first statement, intemperately stated though it might be, is then said to be a concern over resources (in other words, the pool being closed to other swimmers for two hours each week), that behaviour would probably not be sufficient for a breach of the Code.

# Paragraph 3(2)(b)

## Bullying

You must not bully any person.

**Note:** This paragraph of the Code was included to reflect the concerns arising from the recurring problem of bullying of officers by some members. However, its scope is not just limited to the bullying of officers.

# Q & A Paragraph 3(2)(b)

## Q20: What is meant by 'bullying' in this section of the Code of Conduct?

Standards for England defines bullying as offensive, intimidating, malicious, insulting or humiliating behaviour by an individual or group of individuals, based on abuse or misuse of power or authority, which attempts to undermine an individual or a group. It can have an impact on a council's effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave.

Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, or when the behaviour by both the complainant and member contributed equally to the breakdown in relations.

## Q21: Who decides whether someone has been bullied?

Ultimately a standards committee, the First-tier Tribunal or the courts will decide. They are likely to use an objective test. If an officer, member or member of the public thinks that a member has bullied them, the conduct will be looked at through the eyes of a notional reasonable member of the public who looks at the conduct objectively.

Equally, while members may not consider their conduct has constituted bullying, it is likely to be seen as such if a notional reasonable member of the public who looks at the conduct objectively would regard it as bullying.

## Q22: Can members criticise officers?

Yes. In some cases, officers have been known to reject reasonable criticism appropriately made and describe it as bullying. The government did not intend the Code of Conduct to constrain members' involvement in local governance, including the role of members to challenge performance. Members are able to question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time.

This paragraph does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in criticism of the way in which an officer or officers handled particular matters.

It is important that members raise issues about poor performance in the correct way and at the proper forum, such as in a private meeting with a senior manager, and not in a public meeting or through a published attack in the media. However see the case APE 0414: in that case the tribunal found no breach of the Code where the councillor had made criticisms reported in a local newspaper of the planning regime at the council.

If a member's criticism is a personal attack or is offensive in nature it is likely to be unacceptable. Councils should have clearly defined policies, procedures and occasions where those sorts of issues can properly be raised. It is only where members' conduct is unfair, unreasonable or demeaning that paragraph 3(2)(b) will be relevant.

# Q & A Paragraph 3(2)(b)

## Q23: How can bullying conduct be prevented from developing?

Ideally, a culture of honest and clear communication should be sought, with respect for the individual and for the confidentiality required when managing individual performance-related issues. The bullying of officers might be reduced by establishing a specific protocol, which addresses issues such as member-officer work relations and appropriate behaviour.

Factors that contribute to the breakdown in relations between members and officers at parish and town council level include the council not having a member-officer protocol, proper disciplinary and grievance procedures, or contracts of employment. In addition, members are often unskilled and inexperienced in approaching employment-related issues.

The protocol for parish and town councils can include such simple but important matters as acceptable times to contact the clerk by telephone at home or call at the clerk's home on council business.

## Q24: What constitutes evidence of bullying?

Although many minor acts can cumulatively amount to bullying, the subjective general view of the victim or witness needs to be supported by objective evidence of action that can amount to bullying. Anyone alleging a pattern of bullying conduct should provide some examples of the words or actions used.

In contrast, general statements such as "the member has repeatedly intimidated and denigrated me" are not adequate. The victim or witness should describe the specific conduct they are concerned about, providing dates, times, locations, and descriptions of the demeanour of the person concerned.

This is not intended as an exhaustive list but as an indication of the kind of evidence needed. A number of cases considered by the tribunal have concerned the bullying of officers and members. This bullying conduct has included:

- Abusive or threatening verbal contact.
- Circulating inappropriate emails critical of officers and fellow members.
- Making allegations about officers in newspapers, letters, emails or in person, both in the company of the officers' colleagues and either in public or circulated to the public.

# Case examples

## Paragraph 3(2)(b)

**Please note:** The first three case examples listed below happened under the old Code of Conduct which did not contain a specific provision about bullying and the fourth included behaviour under both Codes.

### APE 0166

A member made unjustified complaints about officers, questioning their integrity and implying that they had acted unprofessionally. He had no evidence to substantiate his claims. He made disparaging remarks about their conduct when he did not agree with them. The case tribunal found a pattern to the member's behaviour, saying:

"The [councillor] perceived anyone who did not accept his version of events as wrong and in some way underhand. Instead of remaining disinterested the [councillor] treat[ed] the matters as personal battles which were to be won by any means, including tarnishing the professional reputations of the officers involved without justification"

#### [Decision](#)

### APE 0236/0237

A member threatened one of the council's solicitors during a discussion with him about arrears of rent which had arisen under a lease by a community centre. The solicitor had advised him that the community centre could be repossessed if the debts were not repaid.

The solicitor was allegedly told by the member that there was a new administration in power; that under no circumstances would repossession take place and if he ever tried to do this he would "have his guts for garters". For this and other breaches of the Code of Conduct the member was disqualified for 15 months.

#### [Decision APE 0236](#)

#### [Decision APE 0237](#)

### APE 0374

In his capacity as an executive member, a former council leader wrote to the council's head of human resources after she had attempted to investigate sickness absence taken by his ex-partner who was a council employee. He threatened to write to all members of staff instructing them not to co-operate with senior managers over sick leave.

Later, at a meeting, he became angry when the head of human resources suggested that he might need to declare an interest at an informal meeting. He ordered her out of the meeting and threatened to have her disciplined. He then wrote to the monitoring officer demanding that action be taken against her. In the letter he threatened to write to the media and to all employees stating that they should have no faith in the head of human resources.

The executive member had already been found to have breached the Code by the standards committee over a previous incident involving the way in which he spoke to an officer.

# Case examples

## Paragraph 3(2)(b)

The case tribunal found that the member's purported apologies about his current behaviour were less than wholehearted. Due to the seriousness of the breaches and his persistence in demanding that the head of human resources be disciplined, the member had ensured that a period of disqualification was appropriate.

Taking into account his difficult personal circumstances at the time of the breaches, he was disqualified from office for three months.

### [Decision](#)

#### APE 0436

The tribunal considered a former councillor's behaviour towards a senior planning officer. (He had resigned before the hearing). The case tribunal found that the former councillor's behaviour was bullying. There were a series of events:

- The former councillors' highly personal attack on the officer at a meeting in the chief Executive's office.
- His telephone call to the council's complaints officer recorded in an email to the officer as "The councillor has just rung and wasn't satisfied with the outcomes of the 2[and half] hour meeting yesterday....and he asked me to tell you that he will prove that you lied at Ctte and if you want to take him to standards he will look forward to it."
- Writing to the council leader three times over a 5 month period accusing the officer of telling lies. When asked to provide evidence to support his claim, he failed to do so.
- A meeting with the officer at the former councillor's home in July 2007 during which he told him that he had a number of documents which could prove that the officer had told lies, that "If you put one foot out of line I'll bucking have you," that he could get him out of his job and that he knew where the officer lived. The former councillor went on to say that he expected to be able to discuss future planning applications with him even though the officer was no longer Head of Planning.
- The Case Tribunal found that through his treatment of the officer both in calling him a 'liar' repeatedly, without foundation or explanation, and his comments to him at the meeting he had failed to treat him with respect and bullied him. They said that any accusation of lying is an extremely serious matter for a councillor to make against an officer and this ought to have been taken up through senior officers then immediately backed up with an explanation and evidence in support.

For this and other breaches the councillor was disqualified for three years.

### [Decision](#)

#### LGS/2009/0483

This case was also referred to above in the context of disrespect. The tribunal found that the councillor's conduct was a breach of the Code because of the persistent and hectoring

# Case examples

## Paragraph 3(2)(b)

nature of some of the councillor's communication and his complete disregard for any attempts by to channel his enthusiasm into a less pestering style. The tribunal noted that an email sent by the councillor to the chief executive was resent on eight separate occasions and that in response to the draft report of the ESO, the councillor provided in excess of 100 emails between himself and street services officers during a two year period.

The tribunal accepted the chief executive and the council's monitoring officer should be robust in their dealings with members. However by publicly questioning their integrity and, in the case of the chief executive, whether or not he should resign as a result, the councillor's conduct amounted to behaviour which was intimidating, insulting and humiliating. It attempted to undermine them. The tribunal was also of the view that the councillor's persistent and pestering communication with some officers and complete disregard for the attempts to control his communication had the effect of bullying a more junior member of staff who found this conduct overwhelming and stressful. For this bullying and other breaches he was disqualified for one year.

### [Decision](#)

### LGS/2010/0504

In this case (referred to above in the context of disrespect) although the behaviour of the councillor was found to be disrespectful to the deputy monitoring officer (DMO) it fell short of bullying. The behaviour complained of involved sending an abusive email to the DMO, which he then sent to a local newspaper who had published an edited version of it. He subsequently wrote to the paper making allegations against the DMO, and later in another letter to them stated that because the DMO had not replied through the letters page, he (and another councillor) 'had confirmed their contempt for all things public' and had refused to be accountable. He also entered into email correspondence with the monitoring officer in which he criticised the DMO. In his role as chairman of the parish council the councillor did not have power or authority over officers of the authority which employed the DMO. The case tribunal view was that the DMO was a reasonably senior officer and the councillor had no standing in the DMO's employing authority. The tribunal did not, therefore, consider that the councillor's remarks crossed the threshold into bullying as opposed to common abuse. They would emphasise that, had the DMO been a more junior officer, or had the councillor been a member of his employing authority, a different view would have been taken.

This case is the subject of an appeal to the Upper Tribunal.

### [Decision](#)

### LGS/2010/0512

The councillor, who at the relevant time was the Mayor, had appealed against the standards committee's finding that he had bullied the town clerk and failed to treat her with respect.

The Mayor at the request of the council took responsibility for the clerk's induction; overseeing her training and development in the role. In his supervision of her he intruded on her role and failed to allow her to develop it appropriately. He took responsibility for a wide range of activities, tasks and projects which would normally have fallen to her. The tribunal found that he acted with the best of intentions and that for much of the period concerned his

# Case examples

## Paragraph 3(2)(b)

relations with her were, on a personal level, excellent. Witnesses could not point to any specific incident which could be described as bullying. However the continued over-involvement and over-direction had a significant effect on her health and happiness.

The clerk did not effectively raise her concerns about this approach nor did she actively seek further responsibility. She decided to resign. She drafted a letter of resignation and discussed her resignation with the new Mayor. The new Mayor attempted to resolve the difficulties and persuade the clerk to remain through convening a meeting with the old Mayor. This meeting was unsuccessful due in part to the insensitivity of the old Mayor to a difficult situation. The clerk was shortly afterwards admitted to hospital for a period of time before she returned to work.

The tribunal concluded that there was a consistent pattern of well intentioned and what was meant to be helpful conduct but that it was objectively inappropriate. Nevertheless it did not, in the circumstances, amount to bullying, nor was it a failure to treat the clerk with respect. There was clearly no intention to humiliate or demean. The facts of the case demonstrated a need for the council to have an appropriate job description for the post and time related competencies for the development of new post-holders. It also demonstrated the need for there to be an agreement between officers and members of the demarcation of roles, working arrangements and use of the Town Council's offices.

### [Decision](#)

# Paragraph 3(2)(c)

## Intimidation

You must not intimidate or attempt to intimidate any person who is or is likely to be:

- 1) a complainant,
- 2) a witness, or
- 3) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's Code of Conduct.

# Q & A Paragraph 3(2)(c)

## **Q25: When does the duty not to intimidate start?**

Once there is the possibility of a complaint that the Code of Conduct has been broken, members need to be alert to how their behaviour towards potential witnesses or officers involved in the administration of their case may be viewed. However innocently the contact is intended or may appear, great care should be taken when members deal with people involved with their case. Apart from interviews with an investigator, discussion of the case should normally be limited to administrative arrangements.

## **Q26: What can a member do to protect themselves from allegations of intimidation?**

A member should not instigate communication about a complaint or its investigation with others involved in a case.

If the need arises and the member has no legal assistance, they should normally communicate with those involved in writing. This is for their own protection and is also in the interests of transparency. If that is not possible then members should, if appropriate, confirm their conversations in writing as soon as possible.

# Case examples

## Paragraph 3(2)(c)

### APE 0238

Please note: This case example happened under the old Code of Conduct which did not contain a specific provision about intimidation.

A member held a meeting with an officer at which he attempted to coerce him into influencing one of his staff not to give evidence against the member at a hearing before a case tribunal for alleged breaches of the Code of Conduct. The member was already disqualified for three years. He was disqualified for a separate period of two years as a result of this behaviour which resulted in a longer period of disqualification overall.

#### [Decision](#)

### APE 0417

A councillor was under investigation for alleged breaches of the council's code of conduct following complaints made by the chief executive. On the same day as his membership of his political party was formally revoked he wrote letters in identical terms to the Honorary Secretary of the Association of Local Authority Chief Executives (ALACE) and, the Director General of the Society of Local Authority Chief Executives (SOLACE). These letters complained about the conduct of the chief executive over a period of time. He had similar correspondence with the council. In a meeting with council officers the councillor raised the possibility that he would withdraw some of his conduct allegations against the chief executive as part of a negotiated solution, and made reference to the code investigations.

The tribunal found that although there was no evidence that the chief executive was intimidated that did not of itself mean that the allegation of a breach of paragraph 3 (c) failed. There would still be such a breach if the councillor had attempted such intimidation. In the tribunal's view, for that claim to succeed they would have to accept that in writing the letters, the councillor intended to intimidate the chief executive into refraining from making further complaints about him or in tempering such evidence (if any) that the chief executive was called upon to give in relation to complaints already made and under investigation. They decided that he was seeking revenge for the chief executive's past actions rather than seeking to intimidate him. Therefore, they concluded that there had been no breach of paragraph 3 (c) of the Council's Code. For bringing the office of councillor into disrepute the councillor was disqualified for two years.

#### [Decision](#)

# Paragraph 3(2)(d)

## **Impartiality of officers**

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

# Q & A Paragraph 3(2)(d)

## Q27: What activities would “compromise the impartiality of those who work for, or on behalf of, your authority”?

Paragraph 3(2)(d) is directed at any activity that seeks to put pressure on officers to carry out their duties in a way that is biased or partisan. This may include direct or indirect coercion to favour a particular person, group or organisation, whether commercial, political or voluntary. This is contrary to officers’ obligations to act independently and in the public interest.

It is important to take a firm line against any conduct that undermines the principle of political neutrality, under which all officers operate. The only exceptions to this neutrality are political group assistants appointed under Section 9 of the Local Government and Housing Act 1989.

Paragraph 3(2)(d) may cover the whole range of activities carried out by the authority. Examples include:

- Preparing committee reports, particularly in a controversial area such as planning control or licensing.
- The allocation of council housing.
- The appointment of staff.

Local authority constitutions drawn up under Section 37 of the Local Government Act 2000 must contain protocols for managing member-officer relations (in accordance with the requirements of the Local Government Act 2000 (Constitutions) (England) Direction 2000). Members who fail to comply with such protocols may be found to have compromised the impartiality of officers.

The fact that the conduct under consideration did not actually compromise the impartiality of officers, or was not intended to do so, will not necessarily excuse a member’s conduct. Paragraph 3(2)(d) covers any conduct that was intended, or was likely, to compromise the impartiality of officers.

## Q28: Who is covered by the phrase “work [...] on behalf of [...] your authority”?

Clearly this term covers those who work for the authority, such as council officers. The inclusion of the phrase “or on behalf of” indicates that members must be just as vigilant in relation to contractors or consultants who are working for the authority on a short-term basis, or the employees of organisations that deliver local authority services.

Members should not improperly seek to influence the way in which such people carry out their duties.

# Case examples

## Paragraph 3(2)(d)

### APE 0107

This example concerns making false allegations against officers.

A member claimed that two members of another political party had intimidated a council officer into delaying the clean-up of an estate.

The case tribunal considered that the statements were false and seriously damaged the reputations of the councillors and the council officer concerned. It concluded that the member acted in a way that was likely to compromise the council officer's impartiality by falsely claiming that he had yielded to improper pressure.

#### [Decision](#)

### APE 0239

This example concerns a member seriously compromising the impartiality of officers.

A member inappropriately interrupted an informal meeting between council officers and trade union members to give his opinion on council staffing matters. His son was a council employee. The member threatened to sack an employee and was aggressive and abusive.

The tribunal found that the member's interruption of the meeting had irretrievably compromised the officers' impartiality in dealing with the trade union members. The tribunal considered that the member had put pressure on the officers to accept his suggestions on staffing issues.

#### [Decision](#)

### APE 0398

The councillor emailed a planning case officer about a planning application in which he had a prejudicial interest. This email was written in the capacity of councillor and there was a clear attempt to influence the conduct of an officer. In so doing he had compromised the impartiality of an officer who worked for the authority. For this and other breaches the councillor was disqualified for a period of one year.

#### [Decision](#)

### APE 0444

This case concerned a planning application by a councillor. This was approved against officer recommendation and under the council's procedures a further report after a cooling off period was required to be presented to the planning committee. During that period the tribunal found that pressure on officers arose from the councillor's personal circumstances, her style of communication, her status of councillor and because she had involved other senior members. The councillor was seeking to have her application processed in a different way than would have applied to an applicant who was not a member of the council. In so doing she was likely to compromise the impartiality of the officers. For this and other breaches she was disqualified for two years.

# Case examples

## Paragraph 3(2)(d)

[Decision](#)

### APE 0447

This is a case linked to APE 0444 above. The Leader of the council involved himself in the planning application. The case tribunal said “for the Leader of a council improperly to intervene in a planning application from a councillor who was both a friend and a member of his political group and for him to make remarks which compromised or were liable to compromise the impartiality of senior officers of the council are breaches of the Codes of Conduct” Having taken considerable mitigation into account, for this and other breaches the councillor was suspended for six months.

[Decision](#)

# Paragraph 4

## Confidentiality

You must not:

- a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - i) you have the consent of a person authorised to give it;
  - ii) you are required by law to do so;
  - iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - iv) the disclosure is:
    - aa) reasonable and in the public interest; and
    - bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- b) prevent another person from gaining access to information to which that person is entitled by law.

# Q & A Paragraph 4

## Q29: What is meant by “information”?

Information is a broad term. It includes facts, advice and opinions. It covers written material, including tapes, videos, CDs, DVDs and other electronic media.

It covers material in unwritten form, including intellectual property.

## Q30: What is meant by “confidential”?

Information can only be confidential if all of the following apply:

- It has the necessary ‘quality of confidence’ about it (trivial information will not be confidential but information that you would expect people to want to be private would be).
- It was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential).
- Disclosure of it would be detrimental to the party wishing to keep it confidential.

Section 100A(3) of the Local Government Act 1972 defines ‘confidential information’ – for the limited purposes of preventing public access to the meetings of certain types of authority (excluding parish councils) – as:

- a) Information supplied to the council by a government department upon terms (however expressed) which forbid the disclosure of the information to the public.
- b) Information which is prohibited from being disclosed to the public by or under any enactment or by order of a court.

An authority also has the power to exclude the public from a meeting during an item of business whenever it is likely that there would be disclosure to them of ‘exempt information’. The categories of exempt information are set out in Schedule 12A of the Local Government Act 1972.

Examples are:

- Personal information about an individual’s employment or financial situation.
- Labour relations matters between the council and its employees.
- Enforcement matters.
- Information that attracts legal professional privilege.

Information that is ‘exempt’ may be disclosed if the public interest in disclosing the information outweighs public interest in maintaining the exemption.

This means that disclosure of confidential information (as defined by Section 100A(3) Local Government Act 1972) by a member will be a breach of the Code, but disclosure of exempt

# Q&A Paragraph 4

information may not be. However, this is only if the member can show that the public interest in disclosure outweighs the public interest in maintaining the exemption.

This publication has already considered some technical meanings of the word 'confidential'. In a more general sense, internal discussions between members and officers may also be confidential – for example, if they concern emerging council policy. In addition the term can include matters of commercial sensitivity, or security.

## Q31: What is meant by “of a confidential nature”?

This phrase covers situations where a member becomes aware of information accidentally or through a third party. Information of a confidential nature goes beyond the very narrow definition of confidential information given in Section 100A(3) of the Local Government Act 1972.

Information is not confidential or of a confidential nature solely because the originator or the person concerned would prefer the information to be kept out of the public domain.

However, there may be contractual reasons why information may be of a confidential nature, for example because of a confidentiality clause in an agreement, or if it is sensitive commercial information, which could result in a breach of contract if disclosed.

Matters of commercial sensitivity, which may at one time be exempt, may later become public information – for example in relation to a local authority property transaction. In considering whether a breach had occurred, timing would be a major factor to take into account.

Under the Freedom of Information Act 2000, information must be provided to an applicant unless an exemption applies. Information that would not be released under the Freedom of Information Act 2000, is confidential or of a confidential nature. Other information is unlikely to be.

## Q32: When can a member disclose information of a confidential nature without being in breach of the Code of Conduct?

If members believe the information is confidential they must not disclose it, except in the following circumstances:

- They have the consent of the person authorised to give it.
- They are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, from a lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.
- The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
  - i) The disclosure must be reasonable.
  - ii) The disclosure must be in the public interest.

# Q & A Paragraph 4

- iii) The disclosure must be made in good faith.
- iv) The disclosure must be made in compliance with any reasonable requirements of your authority.

## Q33: Who is “authorised to give” consent to the disclosure of confidential information?

The person who originally provided the information given in confidence will normally be authorised to give consent to its disclosure.

However, this authority may be overridden if there is a conflict between the willingness to disclose the information and the intrinsically confidential nature of the information.

This is the case even if the disclosure is agreed by the person who originally provided the information. Where information is “given [...] in confidence” but is also genuinely confidential in nature, an objective assessment of interests is called for. It will not always be enough for the person who originally provided the information to the member to consent to its wider disclosure. The member may need to ask another person who is in a position to balance any competing interests involved.

▶ [Back to questions](#)

## Q34: When will a person be “required by law” to disclose information?

There will be a wide variety of circumstances where a person is required by law to disclose information.

The most obvious example is where a person is summoned to give evidence in a court of law. The general rule is that a person is required to disclose whatever evidence is relevant to the issues before the court, although there are notable exceptions to this rule (for example, information that attracts legal professional privilege).

However, there are many other circumstances where members may find themselves required by law to disclose information. Section 62 of the Local Government Act 2000 gives ethical standards officers the right to request, from anyone, any information or explanations that are necessary for their investigations. It is a criminal offence not to comply with such a request.

▶ [Back to questions](#)

## Q35: What factors do you need to take into account when deciding whether the disclosure is “in the public interest”?

The four requirements to be met are outlined in more detail below.

- 1) The first requirement, that the disclosure must be reasonable, requires a member to consider matters such as:
  - Whether there is a genuine belief that the information disclosed, and any allegation contained in it, is substantially true. The disclosure is unlikely to be reasonable if this belief is not held.

# Q & A Paragraph 4

- Whether the disclosure is made for personal gain. If the disclosure is paid for, it is unlikely to be reasonable.
  - information to the police or to an appropriate regulator. It is less likely to be reasonable to disclose the information to the world at large through the media.
  - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
  - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
  - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to recur.
  - Whether the disclosure involves a member's authority failing in a duty of confidence owed to another person.
- 2) The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following or something of comparable seriousness that either has, is, or is likely to happen:
- a) a criminal offence
  - b) a member's authority or some other person failing to comply with any legal obligation to which they are subject
  - c) a miscarriage of justice
  - d) the health or safety of any individual being in danger
  - e) the environment being damaged
  - f) information tending to show any matter falling within (a) to (e) being deliberately concealed
- 3) The third requirement, that the disclosure is made in good faith, will not be met if the disclosure is made with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.
- 4) The fourth requirement is that the reasonable requirements of the member's authority have been complied with, such as an authority's policies or protocols on matters such as whistleblowing and confidential information. This means that before making the disclosure, a member must first raise concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, a member may need to weigh up the public interest in maintaining confidentiality against any public interest favouring disclosure.

# Q & A Paragraph 4

This means thinking carefully about how confidential the information is, any potentially harmful consequences of its disclosure, and about any factors which may justify its disclosure despite these potential consequences.

In some situations, it may be extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

## **Q36: Does the right to freedom of expression in the European Convention on Human Rights prevent a disclosure of information being a breach of the Code of Conduct?**

No, not of itself. The freedom of expression in Article 10(1) of the Convention is qualified by duties and responsibilities in Article 10(2) and may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society for preventing the disclosure of information received in confidence.

The balance of the public interest in maintaining confidence must be weighed against the countervailing public interest in disclosure (see APE 0241 in Case Examples).

## **Q37: What types of information can members of the public access “by law”?**

The circumstances where paragraph 4(b) may apply are too wide to list exhaustively here.

Members of principal local authorities can find useful information in the ‘Access to Meetings and Documents’ provisions contained in Part VA of the Local Government Act 1972. Categories of information which are exempt from public access can be found in schedule 12A of the Local Government Act 1972 (as amended by the Local Government (Access to Information)(Variation) Order 2006 and the Relevant Authorities (Standards Committee)(Amendment) Regulations 2006).

Parish councillors will need to consider the provisions of the Public Bodies (Admission to Meetings) Act 1960. These statutory provisions legally entitle members of the public access to certain information.

In addition, Section 81(6) of the Local Government Act 2000 requires the register of interests, which monitoring officers establish under Section 81(1) of the Local Government Act 2000, to be available for public inspection at all reasonable hours. If a member attempted to prevent access to information covered by these provisions, that member would fail to comply with paragraph 4(b) of the Code of Conduct.

Members of local authorities have the right to see documents held by the authority if they can demonstrate a ‘need to know’. Overview and scrutiny committees may require members of the executive and officers of the authority to attend before them to answer questions. Withholding information from an overview and scrutiny committee could be a breach of paragraph 4(b) of the Code.

# Q & A Paragraph 4

## Q38: What is meant by preventing “access to information”?

A member must not prevent any person from accessing information which they are entitled to by law.

This includes information under the Freedom of Information Act 2000 and the right of access to personal data under Section 7 of the Data Protection Act 1998. It includes copies of minutes, agendas, reports and other documents of their authority which they have a right to access.

To find out more about what types of information the public can access, contact the Information Commissioner’s Office by visiting [www.ico.gov.uk](http://www.ico.gov.uk) or by calling 0845 630 6060.

# Case examples

## Paragraph 4

### APE 0241

This case example demonstrates the need to balance the right of freedom of expression with the obligation of confidence under the Code of Conduct.

A member leaked confidential documents to the press about the council's efforts to recover a substantial sum of money from the former leader of the council.

Although the case tribunal acknowledged the public interest in exposing possible inactivity on the part of the council in recovering the debt, it concluded that the overriding public interest was in recovering the money, which required the documents to remain confidential.

The disclosure of confidential documents had taken place when High Court gagging orders were in place. These orders were a proportionate restriction on the right to freedom of expression, given the ability of the former leader to move assets out of the jurisdiction of the courts. Therefore the member was in breach of the Code when he disclosed documents to the press, although in the circumstances no sanction was imposed.

### APE 0285

This case example is about a member's right to access the accounts of a council.

The chair of a council took steps to prevent other members gaining access to the accounts of the council. The tribunal confirmed that Section 228(3) of the Local Government Act 1972 and the common law, taken together, give a member of a council the right to inspect accounts and documents.

The right under Section 228(3) is not limited to approved accounts or to accounts in the public domain. Frustration of these statutory and common law rights by the chair of the council – by not allowing members to inspect the accounts – constituted unlawful withholding of information within the meaning of the Code.

### [Decision](#)

### APE 0420

The tribunal in considering whether or not information was confidential took into account that some information would be disclosed were a request made under the Freedom of Information Act. Such information was not considered confidential. The councillor had attended a meeting at which the voluntary redundancy of the chief executive was considered, and voted in favour of the matter being taken in exempt session. He subsequently put out a press release that included personal information about the chief executive. He argued that the Chief Executive was responsible for a significant part of the council's financial difficulties and that he should have resigned or been dismissed. The case tribunal did not consider that any of the exceptions to paragraph 4 of the Code applied. The councillor was suspended for three months.

### [Decision](#)

# Case examples

## Paragraph 4

### APE 0429-0434

Allegations relating to the behaviour of five councillors and one former councillor, were considered. The matter related to a call by the councillors to the town clerk in the local press to co-operate with the police, concerning some cheques, which had been destroyed before being lodged in the bank. There was no evidence before the Tribunal of statements made to the press beyond what appeared in the press article. It contained no information of a confidential nature or information disclosed to members in confidence at any town council meeting. It simply recorded the fact of a report to the police. The Tribunal found that the only disclosure of anything of a confidential nature was made to the police. The Tribunal considered that this disclosure was made in accordance with their duty as a citizen to report what they considered was, potentially, serious criminal conduct to the police. The Tribunal considered that such disclosure was either required by law or alternatively reasonable, in the public interest, made in good faith and involved no conflict with the reasonable requirements of the town council. It therefore involved no breach of paragraph 4 of the Code.

#### [Decision](#)

### LGS/2009/0462

This case is about disclosures to local newspapers by a councillor of information relating to proposals for the extension of a town centre supermarket. Part of the information had been sent to him accompanied by a letter from the monitoring officer reminding all members of the confidential nature of the contents. When the councillor expressed his concern that the matter was to be considered in private at the council meeting he was told by the chief executive and the monitoring officer that disclosure could prejudice the council. Despite the council having voted for the matter to be exempt, the councillor disclosed information. Also despite an undertaking given personally to the monitoring officer not to do so, he disclosed information from the minutes of a later meeting which were also exempt.

The tribunal considered the councillor's right to freedom of expression under Article 10 European Convention on Human Rights and considered the qualification imposed on that right in Article 10(2). They concluded that the public interest in maintaining confidence had to be weighed against the public interest favouring disclosure. The council itself undertook that weighing exercise when it decided that the matter should remain exempt from disclosure in two separate meetings. Having found that none of the exceptions in paragraph 4 of the Code applied, the case tribunal found that the councillor was in breach of paragraphs 4 and 5 of the Code, and suspended him for six months.

#### [Decision](#)

### APE 0469

This case was about comments a councillor made to the press about a large industrial site in his ward that has lain derelict for some years and has been the subject of discussions between the property owner and the Council.

In an article appearing in two local papers a Council officer confirmed that talks were under way with the authority's planners and the owners, and was quoted as saying that it was "very early days", "We are in discussions with the owners about an outline application being drawn

# Case examples

## Paragraph 4

up for the site. Hopefully something can be sorted out." and "It is something people living in the area have asked us about so we have responded."

There then followed comments from two councillors. The councillor concerned told the newspaper that "We could do a compulsory purchase on the land but then we could be looking at £10m to get it, it is all about negotiation."

It was found by the Standards Committee that this amounted to a breach of paragraph 4 of the Code of Conduct.

The tribunal had to decide whether the undisputed quotation appearing in the newspapers disclosed confidential information. The report of the Investigating Officer conceded that the figures quoted were not contained in the report. The tribunal considered the words "We could do a compulsory purchase on the land" was a general statement of the statutory powers of a local authority that were well known. The statement quoted did not necessarily imply that the Council had the intention of exercising these or any other powers in respect of the site. The appeal was upheld there was no breach of the Code.

### [Decision](#)

#### LGS/2010/0479

Confirmation of all or part of the contents of a story to a reporter also featured in an appeal. The formal position of the Police Authority the Metropolitan Police Force and the local constabulary was that the complainant's name should not be disclosed. The appellant as chairman of the Authority spoke to a reporter and during her conversation indirectly confirmed the identity of the complainant, not by mentioning a name but by confirming the use of the name by the reporter.

The case tribunal having decided that the information was of a confidential nature concluded that the exceptions under the code that allowed disclosure did not apply. They took the view that it was not reasonable to disclose the information given the impact of its release on the personal situation of the complainant and his family, the fact that he had retired, and the fact that the allegations against him were at the time unsubstantiated, as indeed they remained. There was no evidence of a clear public interest in releasing the information although, had the complainant continued in his former role with the force, it might have been possible to argue that the allegations cast doubt on his ability to carry out his role effectively. The tribunal concluded that the disclosure, although inadvertent, was clearly not in compliance with the reasonable requirements of the Authority, given the existence of a media policy which the member was clearly aware of and felt bound by. The Appeal tribunal upheld the decision of the Standards Committee that the councillor should undertake media training.

### [Decision](#)

#### LGS/2010/0514

The appeal tribunal held that there was a breach of paragraph 4 of the Code where the councillor sent an email to a local newspaper which mentioned an accusation that he had bullied an officer of the Council. It provided details of the alleged bullying and the title of the post holder concerned. The tribunal found that the information about the officer was

# Case examples

## Paragraph 4

inherently confidential and the councillor should have been aware of that as it was an internal matter affecting a member of staff. The tribunal said that, although the name of the post holder was not provided, it is common practice for the names of local government managers to be available to the public. The information that was released was part of an internal complaint that should have been kept confidential. There appeared to be no public interest or other exception that would legitimise its release.

[Decision](#)

# Paragraph 5

## Disrepute

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

# Q & A Paragraph 5

## Q39: When does paragraph 5 apply?

Paragraph 5 applies when members are:

- Acting in an official capacity. In other words, whenever they conduct the business of their authority or act, claim to act, or give the impression they are representing their authority. This includes a situation where they represent their authority on any other organisation including another relevant authority.
- At any other time, where that conduct constitutes a criminal offence for which they have been convicted (however, see Question 9).

Usually it will be obvious to members whether or not they are acting in an official capacity, for example discussing council business at a council meeting.

## Q40: Are all criminal convictions covered by the Code of Conduct?

No, not unless changes are made to Section 52 of the Local Government Act 2000 (see Q9 above). For the Code to be broken there needs to be a link between the criminal conduct which led to the conviction and the performance of a member's functions.

For example, if a councillor is convicted for housing benefit fraud, as inappropriate as this behaviour might be, it has most likely occurred in a private capacity. This is because applying for housing benefit is not part of a councillor's role.

However, if the fraud arose by a member using their role as a councillor to pressurise a housing benefit officer into granting the benefit then this would be a case where paragraph 5 might apply, if the fraud resulted in a conviction. This would be a breach of paragraph 6(a) in any event, even if there were no conviction.

As a rule of thumb, paragraph 5 will not apply if a member's conduct cannot be reasonably viewed as being connected to their role as a councillor. This is rather than as a private individual or as a member of a political party, for example. It can be particularly difficult to separate the actions of a member as a councillor and as a politician.

The following example may help. If a member is guilty of violent conduct at a political group meeting of councillors, then that behaviour is likely to be caught by the Code. The same behaviour at a local branch meeting of a political party is not likely to be. For further examples, see the case examples for this paragraph.

## Q41: What kind of conduct is covered by 'performing functions'?

Section 52 of the Local Government Act 2000 includes a requirement for members to be bound by the Code of Conduct when performing their functions. Members should always remember that their actions may reflect badly on the office of councillor or the authority on which they serve. Anything done in an official capacity (see definition in paragraph 2(1)) can be covered by paragraph 5 of the Code. 'Performing functions' means acting in this capacity.

The following are examples of the kind of conduct seen as performing the functions of the office. Criminal conviction for this sort of behaviour could amount to a breach of the Code.

# Q & A Paragraph 5

For example, a member attends a private council pre-meeting to discuss a report, which includes a proposal to buy some land for council purposes. The members are told by officers that they are being given sensitive information on a confidential basis.

Immediately after the meeting, the member contacts the owner and agrees to buy the property for the price quoted to the council. Although buying the land was not done as a councillor, the member was performing his functions when finding out the sale price and that it was for sale.

Certain activities may appear to be related to the functions of a member but are not. For example, when canvassing for re-election, a member is likely to be acting in a private capacity as a political candidate, but not as a member. This is because it is not the function of a councillor to get re-elected.

## Q42: What distinguishes disrepute to “your office or authority” from disrepute to you as a person?

A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member’s office or authority, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of private capacity conduct, for example drink-driving or petty theft, may damage the reputation of an individual but will rarely be capable of damaging the reputation of the office of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the office of member or to the authority in particular cases:

- 1) Situations where members have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their office. For example, councillors using their position to secure a secret personal profit.
- 2) Similarly, situations where a member defies important and well-established rules of the authority for private gain.
- 3) Where a member engages in conduct which directly and significantly undermines the authority’s reputation as a good employer or responsible service provider. For example, they are convicted for sexual offences against children when running a private care home providing services to the council.

## Q43: What is “disrepute”?

In general terms, disrepute can be defined as a lack of good reputation or respectability.

In the context of the Code of Conduct, a member’s behaviour in office will bring that member’s office into disrepute if the conduct could reasonably be regarded as either:

- 1) Reducing the public’s confidence in that member being able to fulfil their role; or
- 2) Adversely affecting the reputation of members generally, in being able to fulfil their role.

# Q & A Paragraph 5

Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute.

Under the Code, a criminal conviction in appropriate circumstances can have the same effects (see Question 9).

## **Q44: What is the significance of the words “could reasonably be regarded”?**

An officer carrying out an investigation about someone allegedly breaking the Code of Conduct does not need to prove that a member’s actions have actually diminished public confidence, or harmed the reputation of an authority, in order to show a failure to comply. The test is whether or not a member’s conduct “could reasonably be regarded” as having these effects.

This test is objective and does not rely on any one individual’s perception. There will often be a range of opinions that a reasonable person could have towards the conduct in question. Members will have failed to comply with the Code if their conduct “could reasonably be regarded” by an objective observer as bringing their office or authority into disrepute.

## **Q45: Does paragraph 5 solely relate to criminal conduct?**

No. It is quite possible, for instance, that activity which brings the honesty and integrity of a member into question will not constitute any criminal offence.

However, it would still be reasonable to regard such behaviour as bringing the member’s authority into disrepute.

Dishonesty in relation to official duties will clearly be a cause of particular concern.

# Case examples

## Paragraph 5

### APE 0169

A councillor used council 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 found to have brought his office and authority into disrepute and was disqualified from office for one year.

#### [Decision](#)

### APE 0308

A member and others rented allotment plots from an association which was planning to repossess them. The member was chairman of a local partnership, which offered grants of up to £5,000 to community regeneration projects. He suggested in a letter that he might be able to obtain funding for the association if the decision to repossess the allotments was reconsidered.

The case tribunal considered that the letter was an offer from the member to influence and secure a grant for the association in return for the withdrawal of proceedings against him and the others. It also considered that the letter abused his position of trust as a member and deliberately sought his own personal gain. It therefore brought his office into disrepute. The case tribunal decided to disqualify the member for one year.

#### [Decision](#)

### APE 0383

This case was under the 2001 Code. A councillor was given information in a private briefing to councillors about the council's proposals to buy land and relocate its offices to another town. The information was made public swiftly after this. The councillor did not agree with the proposals and secretly bought the land. The tribunal found that, together with the lack of openness, these actions diminished public confidence in his ability to discharge his office as a councillor and, therefore, he had brought his office or authority into disrepute. He was disqualified from office for six months.

#### [Decision](#)

### APE 0387

Again this case was under the 2001 Code. A councillor had issued threats to another member immediately before a planning decision was taken. The threats concerned the de-selection of the councillor if he did not vote in a particular way and were coupled with offensive language. These threats were overheard. The tribunal did not find these threats improper in the context of political life, and accepted that future political careers could be affected by the way a member voted. However, the tribunal found that the comments were disreputable. He was suspended from office for one month.

#### [Decision](#)

# Case examples

## Paragraph 5

### APE 0389

A councillor accessed and downloaded inappropriate material on the internet using a computer provided by the council. He was convicted for doing so. Even though that activity may be perceived as private in nature, it constituted behaviour which brought his office into disrepute as he had used the council's equipment. He was disqualified from office for five years.

#### [Decision](#)

### APE 0424

A councillor was found to have breached numerous paragraphs of the authority's Code due to his role as employee, sole director and owner of a company that organised and ran a music festival for which it planned to enter into a land licence agreement with the council of which he was a member. At a full council meeting, members voted on a motion to consider the music festival and the councillor failed to declare a personal and prejudicial interest in the matter and did not withdraw from the chamber before the vote was taken. As an experienced councillor the Tribunal considered that his conduct had also brought discredit to his office and lowered the esteem of the council in the mind of a reasonable member of the public. Therefore the councillor had brought his office and authority into disrepute. He was disqualified for two years (reduced on appeal to the High Court to suspension from office for two months).

#### [Decision](#)

### APE 0425

A councillor made a throwaway, non-malicious remark about the majority group of the council being corrupt. However, he made the comment at a public meeting and by doing so without justification he brought his own office and the authority into disrepute. No sanction was imposed.

#### [Decision](#)

### APE 0439

At an extraordinary council meeting, a debate took place about a boundary review which concluded with a vote. One of the councillors, although logged in to his electronic voting unit, was not present for the debate or the vote. Another councillor voted on both her own voting unit, and the one belonging to the councillor that had left the room. The Tribunal found that, by voting twice on the same motion and by using another member's vote without his permission, the councillor concerned had undermined the integrity of the whole voting process at the council. This would reduce public trust in the councillor's integrity and her ability to exercise good judgment. Further, it would have a negative impact on the public's confidence in the decisions of the authority itself and would seriously harm the reputation of the council. She was disqualified from office for one year.

#### [Decision](#)

# Case examples

## Paragraph 5

### **APE 0465/0466 & APE 0467/0468**

Both councillors were found to have acted disreputably towards the parish clerk in what the Tribunal described as a pre-determined, inappropriate and consistent pattern of public criticism. This involved regular criticism of the agendas and minutes of meetings, as well as of the clerk herself. The tribunal found that it was a jointly agreed strategy between the two councillors and that it brought both the office of councillor and the authority into disrepute – by seriously lessening public confidence in the councillors’ office and the council as an employer of the clerk. One of the councillors was much more actively critical of the clerk’s abilities in public than the other but each was suspended from office for three months.

On appeal to the Upper Tribunal the less actively critical member (APE0465/0466) was found not to have breached the code. On the facts the Upper Tribunal was not persuaded that the two members had been involved in a joint enterprise concerning the matters that constituted a breach of the code by the more actively critical member.

[Decision APE 0465/0466 & Decision APE 0467/0468](#)

[Link to Upper Tribunal case](#)

### **APE 0474**

The councillor, as Lord Mayor of the council, hosted an event which was ceremonial and a fund raiser for the Lord Mayor’s charities. During the evening, he had a conversation with a woman attending the event, some of which was of a sexually explicit nature. The Tribunal found that this conversation was highly embarrassing, offensive and disreputable. The Mayor’s conduct was found to have brought his office and the authority into disrepute. He was given a 3 month suspension from office and required to provide a written apology.

[Decision](#)

### **LGS/2009/0478**

A councillor publicly alleged that a local police officer was under investigation for misconduct/corruption. The Tribunal found that this was based on a clear misinterpretation of the information he had received upon making a complaint to the Independent Police Complaints Commission about that officer. This was a highly misleading statement which the councillor refused to retract even upon receipt of a letter from the Chief Inspector which denied it to be the case. The tribunal considered that making such an allegation against a police officer, without any justification, and considering the potential damage to that officer’s reputation and career prospects, was highly disreputable. For this and other breaches the sanction was 6 months suspension from office.

[Decision](#)

### **LGS/2010/0521**

A district councillor produced a leaflet prior to elections which were to be held for the county council. It was “to inform the residents of current issues at both Brentwood Borough and Essex County Councils.”

# Case examples

## Paragraph 5

The front page of the leaflet contained the following passage,

*'The Council Offices are looking more and more like the Marie Celeste – empty Planning Department, empty Highways Department, empty Finance Department, empty Chief Executives office – where will it end! Those rooms were full and bustling with activity on our residents behalf when the Lib Dems ran the Council, and we still successfully balanced our annual budget.'*

On the reverse page of the leaflet, it said,

*'FIVE QUESTIONS TO ASK YOUR TORY CANDIDATE (IF YOU SEE THEM)*

*...5. Why are the Tories dismembering Brentwood Borough Council piece by piece, i.e. no Chief Executive, no Planning Department, no Finance Department and no Highways Department?'*

The Investigating Officer formed a view that the leaflet 'could reasonably be regarded as reducing public confidence in the district council being able to fulfil its functions and duties and therefore brought the authority into disrepute.' Subsequently, at a hearing panel the councillor was found to have brought the authority into disrepute.

The tribunal found that the councillor had produced the leaflet to further his candidacy for election to the county council. They decided that it is not within the role of a councillor from one authority to campaign for election to another. They also found that the panel appeared not to have properly understood the burden of proof applicable in the case, it had not given any reason for deciding that a suspension was the appropriate sanction and it did not appear to have had regard to Article 10 of the Convention on Human Rights in reaching its decision.

The tribunal found that there had been no attempt to justify an interference with the councillor's right to say what he did in the leaflet. It appeared that the issue was a matter of political party interest and debate. It was appropriate for such issues to be canvassed in the electoral process. There was no evidence that his right to raise the issue was outweighed by any public interest. It was open to those holding opposing views to express them in the same way. The tribunal found that he did not breach the Code of Conduct.

[Decision](#)

# Paragraph 6

## Misuse of position or resources

You:

- a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or a disadvantage; and
- b) must, when using or authorising the use by others of the resources of your authority:
  - i) act in accordance with your authority's reasonable requirements;
  - ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

# Q & A Paragraph 6

## Q46: What kinds of attempts to secure advantages or disadvantages would be improper?

There are circumstances where it will be proper for a member to seek to confer an advantage or disadvantage and other circumstances where it will not.

For example, there can be no objection to members voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that members' attempts to secure this advantage are clearly part and parcel of their duties as a local representative. Therefore, these activities are not improper.

The term 'improperly' is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that members are elected or appointed to public office to serve the public interest.

A member's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a member's public position to promote private interests over the public interest will be improper.

## Q47: What if the attempt to confer an advantage or disadvantage fails?

The wording of the Code of Conduct makes it clear that paragraph 6(a) covers failed attempts as well as situations where an advantage or disadvantage has actually been achieved.

## Q48: When does paragraph 6(a) apply?

It applies when members are:

- Acting in an official capacity.
- At any other time, where that conduct constitutes a criminal offence for which they have been convicted (but see Question 9 and Question 40).

Paragraph 6(a) applies to a member's conduct when acting in an official capacity.

It also includes when a member acts, claims to act or gives the impression that they are acting as a representative of their authority.

It is never acceptable for members to use their public position or seek to use that position to further purely private interests.

If amendments to Sections 49-52 of the Local Government Act 2000 are made by Parliament, paragraph 6(a) will also have effect at any time when the conduct constitutes a criminal offence for which a councillor has been convicted.

# Q & A Paragraph 6

## Q49: What are the “resources of your authority”?

The resources of the authority include services and facilities as well as the financial resources of the authority.

Resources could include any land or premises, equipment, computers, and materials. The time, skills and assistance of anybody employed by the authority, or working on its behalf, are also resources, as is information held by the authority which it has not published.

## Q50: How will members know what the authority’s reasonable requirements for the use of resources are?

Standards for England strongly recommends that local authorities have protocols dealing with the use of authority resources. These protocols should be comprehensive and cover the following topics:

- use of authority premises
- member-officer relationships
- information technology, for example computer equipment and the use of associated software, including the use of such equipment at home
- telephone and fax
- photocopying
- use of stationery and headed notepaper
- postage
- use of authority transport
- allowances and expenses

The key principle underlying all such protocols should be that public office and public resources should not be used to further purely private or party political purposes.

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

Where a member misuses council computer equipment to download inappropriate material a breach of this paragraph will often occur since most protocols for the use of council IT equipment contain a prohibition on viewing and downloading such material. However, most cases of this nature also include potential breaches of paragraph 5. (see APE 0389 in the case examples at paragraph 5 and LGS/2010/0493).

# Q & A Paragraph 6

## Q51: What constitutes using resources “improperly for political purposes”?

Paragraph 6(b)(ii) acknowledges that party politics has a proper role to play, both in the conduct of authority business and in the way that members carry out their duties.

There will be times when it is acceptable for political groups to use the resources of the authority, for example, to hold meetings in authority premises. Often it is impractical to separate a member’s political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents.

However, members and monitoring officers will need to exercise considerable vigilance to ensure that this provision is not abused. They must ensure that there is a sufficient connection between the use of resources and the business of the authority. Only improper use of resources for party political purposes will be a breach of the Code of Conduct.

Paragraph 6(b)(ii) of the Code complements Section 2 of the Local Government Act 1986, which prevents the publication of material "designed to affect public support for a political party".

This sub-paragraph goes considerably further than Section 2 of the Local Government Act 1986 and the Code of Recommended Practice on Publicity. It covers not only the publication of campaigning material but also any other activity that is intended to promote purely party political interests.

Members must have regard to any applicable local authority code of publicity made under the powers contained in Section 4 of the Local Government Act 1986. Publicity is defined as “any communication, in whatever form, addressed to the public at large or to a section of the public”. It will cover meetings and websites as well as printed and other written material.

On the 29th September 2010 the Government published its consultation document about a revised Code of Recommended Practice on Publicity. The closing date for comments is the 10th November 2010

The context in which a member acts will obviously be important in relation to paragraphs 6(b)(ii) and 6(b)(iii). Members should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using their council’s resources in these circumstances, they should not appear to be seeking to influence public opinion in favour of them, their party colleagues or their party.

# Case examples

## Paragraph 6

### APE 0151

This example is about a member seeking to confer an advantage for himself and for an organisation of which he was the chair.

A meeting concerned the council's decision to rent out a playing field to a football club. The member spoke on the matter despite the fact that he was the chairman of a different club, which also intended to use the playing field. The member failed to withdraw from a meeting despite his prejudicial interest.

He also tried to use his position as a member improperly to secure an advantage for his football club. He wrote to the monitoring officer as a councillor objecting to an agreement to keep the football club off the field. He later took out an injunction against the management committee responsible for the field, using his status as a councillor. This was despite the fact that other councillors had warned him that he did not have their support or the support of the council for the action.

He also phoned the parish clerk to complain about a telegraph pole erected outside his property, and said that he would use her name in an injunction against the person responsible if the clerk did not call him back by the end of the day.

Finally, he failed to register an interest in his home in the area of the parish. The case tribunal decided that the member improperly used his position to confer an advantage on the football club, in relation to the field, and on himself, in relation to the telegraph pole erected near his home.

The member was disqualified from office for three years.

### [Decision](#)

### APE 0228

This case example is about a member seeking to confer an advantage on a number of businesses including his own.

A member, in the week before a meeting to discuss car parking charges, contacted three officers connected to the matter in an attempt to influence the decision.

It was alleged that the member had a personal and prejudicial interest in the matter because he was a director of a company that owned a restaurant in the town centre, and that his customers would be adversely affected by the proposed charges. In addition, it was alleged that the member's wife was also a director of the company and was president of the local chamber of commerce.

The case tribunal decided that he had improperly sought to confer an advantage for town centre businesses, which included his own, and had therefore failed to comply with the Code of Conduct. The case tribunal decided to disqualify him for nine months.

### [Decision](#)

# Case examples

## Paragraph 6

### APE 0268/0269

This example concerns a member seeking to confer a financial advantage on an organisation and a person.

The member failed to declare a personal interest and failed to leave the room when the town council's finance and general purposes committee discussed an application for a grant from the town band, of which he was the chair.

He also falsely informed the district council that the town council's environment and planning committee had supported a planning application made by the town clerk, who was a friend of his. The committee had only resolved to hold a site visit. He spoke in favour of the application at the committee's meeting.

The case tribunal decided that the member had a personal and prejudicial interest at the meeting in the consideration of an application for a grant to the town band.

The tribunal decided that the member also had a personal and prejudicial interest in the clerk's planning application and that the member brought his authority into disrepute and improperly conferred an advantage on the clerk.

The tribunal decided that the member should be suspended for 12 months from the town council's planning committee and finance and general purposes committee.

### [Decision](#)

### APE 0382

This case concerned an elected Mayor. This was in a situation where the member held a meeting, whose purpose was unclear, with one of two parties who were in dispute with each other and the council. Officers were not present at the meeting. The mayor had previously been a director of one of the parties and at the meeting personally drew up a document whose purpose was uncertain. The Tribunal concluded that his actions were foolhardy and that there was an unexplained pattern of behaviour favouring one party. However foolish the actions were, they did not amount to a breach of the Code.

### [Decision](#)

### APE 0383

This case is also dealt with under paragraph 5 above. The council intended to purchase land to relocate its offices from one town to another. The councillor privately purchased the land to prevent the council from buying it, because he did not agree with the relocation plans. The councillor incurred a significant loss in the venture. The Tribunal decided that because he thought that he was acting in the public interest, however misguided, and gained no benefit, he did not use his position improperly to secure an advantage or disadvantage. However, he had brought his office or authority into disrepute.

### [Decision](#)

# Case examples

## Paragraph 6

### APE 0417

This example involves a breach of paragraph 6(a) of the Code.

The councillor concerned, in response to complaints made about him by the Chief Executive of the council, responded by writing complaints of his own about the Chief Executive to two representative bodies (the Association of Local Authority Chief Executives and the Society of Local Authority Chief Executives), as well as to the monitoring officer of his council. Those complaints were lacking in detail and largely unsubstantiated. The tribunal found that the motivation for writing the letters was to cause harm to the Chief Executive and that in writing those letters, the councillor sought to use his position improperly to cause the Chief Executive a disadvantage in terms of his employment with the council and more widely.

[Decision](#)

### APE 0424

This case is dealt with in paragraph 5 above. A councillor was found to have breached numerous paragraphs of the authority's Code due to his role as employee, sole director and owner of a company that organised and ran a music festival for which it planned to enter into a land licence agreement with the council of which he was a member. At a full council meeting, members voted on a motion to consider the music festival and the councillor took part. The tribunal considered that he used his position as a member of the council improperly to influence the outcome of a motion which would be to his and his company's advantage.

[Decision](#)

### APE 0433

This case concerned a parish councillor who made a number of allegations about the parish council, some of its members and the interim parish clerk in newsletters which he sent to the whole village. They contained personal and sustained attacks on his colleagues and the interim parish clerk which the tribunal found amounted to bullying. The tribunal found that the criticisms would have engendered strong feelings of injustice as well as stress in those wrongly accused of improper conduct. The councillor proceeded with publication despite the fact that a reasonable person would have known that there was no factual basis for the criticisms. It followed that publication would inevitably have an adverse impact on the well-being of those criticised. Because of the number of publications, the adverse effect was significant and amounted to the councillor using his position improperly to confer a disadvantage on another person.

[Decision](#)

# Case examples

## Paragraph 6

### APE 0444 & 0445

These and other linked cases involving a planning application made by a councillor concern her actions and those of other councillors in dealing with that application.

### APE 0444

The councillor submitted a planning application to build a block of flats in the garden of her home, which had formerly been a hotel. This application, like similar applications from the councillor before it, attracted an officer recommendation not to approve. In an attempt to get it approved she tried to persuade other councillors to speak on her behalf in support of the application. She approached the Leader of the council and the cabinet member for planning, unsuccessfully, amongst others and dealt direct with a planning committee member. In the event, one cabinet member and two junior group members spoke for the application. It was approved and then put on hold by officers. The councillor later applied pressure on officers to get a revised but incomplete application to the planning committee against officer advice and council policy, in an attempt to get a quicker approval.

The tribunal found that the councillor's actions were in breach of several parts of the Code of Conduct. By attempting to get influential members of the council to address the planning committee on her behalf and even though the most senior of those individuals did not agree to her attempts, she had tried to use her position improperly to confer an advantage on herself with regards to the outcome of her planning application. By her actions she had clearly attempted to use her position as a councillor and, through that, her access to other councillors in a way that would not have been available to an ordinary member of the public when making a planning application. The tribunal concluded she had "failed abysmally to divorce that private capacity from her position as a Councillor and she did seek to use that position to gain advantage for herself".

### [Decision](#)

### APE 0445

In this related case, the Deputy Leader of the council was also found to have breached paragraph 6 (a) of the Code. The Deputy Leader was asked several times by the Chief Executive of the council to intervene in the planning application being submitted by his colleague and to persuade her to withdraw her application. The member did speak to his colleague on several occasions and attended meetings between her and planning officers. However, the tribunal was critical of the fact that he seemed to have given very little thought to the pitfall of being regarded as helping a fellow member pursue a matter that she was undertaking in her private rather than official capacity. His involvement led officers to advise him that his intervention was inappropriate and in danger of breaching the Code of Conduct.

The tribunal considered that it was reckless for the councillor to believe that, simply because he had been asked to intervene by the Chief Executive, no criticism could be attached to him. The tribunal also thought the councillor had failed to recognise that his actions could be interpreted by others as securing an advantage for his colleague. This was particularly the case at a meeting where both councillors attempted to get officers to, in words used at least once by the Deputy Leader, "bend the rules" so the revised application could go to committee sooner.

# Case examples

## Paragraph 6

The tribunal felt that the councillor's actions could reasonably be regarded as likely to compromise the impartiality of the officers with whom he was dealing even if they refused to buckle under his influence. That breach meant that his use of his position to confer an advantage on his fellow councillor was an improper use of his position even if his motivation was to deliver a result sought by the Chief Executive.

### [Decision](#)

#### APE 0457

This case involved a planning application in which two rival supermarket companies were trying to get approval to develop a site recently put up for sale by a local couple. The councillor involved was a member of the Planning and Highways Committee and was considered by the tribunal to have a predetermined view as to which supermarket company he would like to be successful. This was demonstrated by his actions towards the couple selling the land including attempts to pressure them into selling to his preferred supermarket group.

The tribunal found that he used his position as a member improperly because, whatever his motivation was, he used his public position to promote commercial private interests in an unfair and unreasonable way and without taking account of the council's proper planning considerations and processes.

### [Decision](#)

#### LGS/2010/0493

The tribunal found that the councillor had breached the council's Code when he used his council issued laptop and email facility to send material which were unpleasant and inappropriate in the form of a joke based upon religion, contrary to the requirements of the council's Electronic Email Usage Policy. The member agreed that his actions were inconsistent with the Council's IT policy and that he acted contrary to paragraph 6(b) of the council's Code. His actions also brought the reputation of his office of councillor and of the council into disrepute contrary to paragraph 5 of the Code. Taking into account his apology, his action in standing down from the Civic Mayoralty and the letters written in his support which testified to his public service the tribunal suspended him for a period of three months.

### [Decision](#)

#### LGS/2010/0519

The councillor, using his personal computer and broad band connection, accessed the Council's web site archive and digitally captured five excerpts from archived web casts of meetings of Cabinet and Full Council. The excerpts captured in this way were then posted as five clips on You Tube and the councillor provided a link to the clips from his personal website. The standards committee found, amongst other things that he had used the authority's resources improperly for political purposes contrary to paragraph 6(b)(ii) of the Code.

# Case examples

## Paragraph 6

The tribunal found that the object of the paragraph was to prevent elected members improperly using resources provided or maintained at public expense which they had access to by reason of being an elected member. It was the link between the office and the resource which justified the restriction on the councillor's conduct.

Where, a council resource was available to all and could be used by anyone for any purpose the link between the resource and capacity of councillor was lacking. If such a resource is used improperly then other paragraphs of the Code might apply. There is no need or justification for seeking to extend the scope of paragraph 6(b)(ii) of the Code to embrace generally available public resources.

As the digital archive was publically available without fee or other restriction on its re-use by any person the tribunal concluded that this was not the type of action on the part of a councillor to which paragraph 6(b)(ii) of the Code applied. The potential for misuse of such digitally stored information, for example through altering the content could be adequately addressed by other paragraphs of the Code.

[Decision](#)

# Paragraph 7

## Advice of statutory officers and reasons for decisions

- 1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
  - a) your authority's chief finance officer; or
  - b) your authority's monitoring officer,where that officer is acting pursuant to his or her statutory duties.
- 2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

# Q & A Paragraph 7

## Q52: Does this duty apply to parish and town councillors?

This paragraph is not a compulsory provision for codes adopted by parish or town councils.

## Q53: What are the statutory duties of the monitoring officer?

Under Section 5 and 5A (for authorities operating executive arrangements) of *the Local Government and Housing Act 1989* the monitoring officer has the following duty. They must prepare and arrange for a report to be sent to all members, where any proposal, decision or omission by the council or executive is, has, or is likely to lead to a contravention of any enactment or rule of law, or any maladministration or injustice, already investigated by the Local Government Ombudsman.

Members must consider the report within 21 days. This means that a meeting of the full council must be convened to consider the report. Any action which had been proposed is suspended during this time. Where the authority is operating executive arrangements, the report is sent to the executive and a meeting of the executive is convened, with action suspended in a similar way.

The *Local Government Act 2000* imposed new duties on the monitoring officer:

- The establishment and maintenance of a register of members' and co-opted members' interests. The register is of the interests specified in the Code under paragraph 8(1)(a) and any new interests under paragraph 13(2). When giving advice about the registration of interests the monitoring officer is giving statutory advice.
- Further duties arise when a case is referred by an ethical standards officer or standards committee for local investigation and/or determination, or where an ethical standards officer or standards committee issues directions to a monitoring officer under Section 66 of the *Local Government Act 2000* or where the standards committee does so under the Standards Committee (England) Regulations 2008. When giving advice about issues relating to these duties the monitoring officer's advice will be caught by paragraph 7.

## Q54: What are the statutory duties of the chief finance officer?

Section 151 of the *Local Government Act 1972* provides that every local authority must ensure that one of their officers has responsibility for the proper administration of its financial affairs. Section 114 of the *Local Government Act 1988* places a specific duty on these officers to make a public report in specified cases of actual or anticipated financial misconduct.

Under this section, a chief finance officer is obliged to produce a report if it appears to them that the authority, any committee or sub-committee of the authority, or a person employed by the authority or a joint committee, has done or is about to do the following: make a decision that involves the authority incurring any unlawful expenditure or take action that would be unlawful, and likely to cause the authority a loss or deficiency or to enter an unlawful item of account.

# Q & A Paragraph 7

## **Q55: Why are only the chief finance officer and monitoring officer mentioned in paragraph 7(l)?**

The chief finance officer and monitoring officer have specific statutory duties to ensure the proper governance of an authority.

Where advice is given to a member by anyone other than the chief finance officer and monitoring officer there cannot be a breach of paragraph 7(1)(b) unless that advice is given again by one of them (see APE 0445).

## **Q56: Does the advice given by a chief finance officer or monitoring officer have to be followed?**

As a general principle, members should take account of the advice of officers. They do not need to follow it if they believe that they have good reason not to do so. In the case of statutory officers, the situation is slightly different. Members do not have to follow advice offered by a chief finance officer or monitoring officer. However, a member is required to have regard to such advice where it is given under a statutory duty by these officers.

If a member disregards or discounts the advice without lawful reason, this is likely to constitute a failure to comply with the Code of Conduct.

Standards for England anticipates that if an authority, committee or executive were proven to have disregarded such advice without lawful reason, it is likely that all members involved in the decision to disregard it would be in breach of paragraph 7(1) of the Code.

There may be circumstances where it is legitimate to question whether the view of the monitoring officer or chief finance officer is correct. This could occur where the state of the law is genuinely unclear. Members who choose not to take account of such advice from these statutory officers need to be in a position to justify their actions. They need to be able to set out the reasons for their decision and the grounds on which they chose not to follow officers' advice.

It is not possible to give an exhaustive list of reasons that might be considered lawful for members choosing not to follow the advice that a chief finance officer or monitoring officer gives to them as part of their statutory obligations. The range of circumstances that would have to be taken into account simply does not make this practical.

## **Q57: What are the statutory requirements to give reasons for decisions?**

Regulations 3 and 4 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (SI 2000/3272), specify that all decisions taken by members of the executive are "prescribed decisions" for the purposes of Section 22(4) and (5) of the Local Government Act 2000. Reasons must be recorded for all such decisions.

The following judicial pronouncement is a useful guide to the proper approach to the duty to give reasons:

"It is trite law that where, as here, an authority is required to give reasons for its decision it is required to give reasons which are proper, adequate, and intelligible... That said, the law gives decision makers a certain latitude in how they express themselves and will recognise

# Q & A Paragraph 7

that not all those taking decisions find it easy in the time available to express themselves with judicial exactitude.” (R v Brent London Borough Council, ex p Baruwa (1997) 29 HLR 915 per Schiemann LJ at 929.)

Members of an executive may fail to comply with paragraph 7(2) of the Code of Conduct if they fail to give proper, adequate and intelligible reasons for a decision.

## **Q58: What are the other requirements to give reasons for decisions?**

Members must comply with “any reasonable additional requirements” imposed by their authority to give reasons for decisions.

For the requirements to be reasonable they will need to be lawful, proportionate, clearly set out and brought to the attention of the relevant decision-makers. It is likely that they will be contained in the authority’s constitution as a protocol or part of a protocol. The protocol will also need to be readily available to members.

# Case examples

## Paragraph 7

### APE 0445

In this case an issue had been raised about the member's failure to follow advice given to him by the Interim Director of Legal Services. Although the ethical standards officer had not alleged any breach of paragraph 7 the tribunal found at paragraph 8.19 of their judgement that there had been no breach of paragraph 7(1)(b) of the Code as the Interim Director of Legal Services was not the Monitoring Officer.

### [Decision](#)

# Paragraph 8

## Personal interests

- 1) You have a personal interest in any business of your authority where either:
  - a) it relates to or is likely to affect:
    - i) 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 authority;
    - ii) any body:
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),  
of which you are a member or in a position of general control or management;
    - iii) any employment or business carried on by you;
    - iv) any person or body who employs or has appointed you;
    - v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
    - vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
    - vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
    - viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
    - ix) any land in your authority's area in which you have a beneficial interest;
    - x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
    - xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

# Paragraph 8

- b)** a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:
  - i)** (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
  - ii)** in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
  - iii)** (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
  
- 2)** (2) In sub-paragraph (1)(b), a relevant person is:
  - a)** a member of your family or any person with whom you have a close association; or
  - b)** any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - c)** any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - d)** any body of a type described in sub-paragraph (1)(a)(i) or (ii).

**Please note:** each point in paragraph 8 is dealt with separately in this section.

# Q & A Paragraph 8

## Q59: What kinds of interests are covered by paragraph 8?

The definition of a personal interest under paragraph 8 is deliberately drafted very broadly.

A personal interest can arise not only from the employment, business interests and shareholdings of the member concerned, but also from those of their relatives or close associates.

The scope of paragraph 8 is much wider than the list of interests that must be registered under paragraphs 13 and 14. This is to enable a relatively wide range of personal interests to be declared in authority meetings without unnecessarily limiting participation.

The wide scope here reflects the policy of promoting transparency in local government that lies at the heart of the Code of Conduct's drafting. The much more restrictive definition of prejudicial interests under paragraphs 10 and 11 ensures that members are not unnecessarily excluded from decision-making.

## Paragraph 8(1)(a)

- 1) You have a personal interest in any business of your authority where either:
  - a) it relates to or is likely to affect:
    - i) 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 authority;
    - ii) any body:
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

## Q60: When will a matter relate to a registered interest?

An example of the very broad drafting of paragraph 8 is the use of the phrase "relates to" in paragraph 8(1)(a).

A personal interest will arise wherever a matter "relates to or is likely to affect" one of the interests registered under the Code of Conduct. There will also be a personal interest wherever a matter affects, or is likely to affect, the people, organisations or places listed in the member's register of interests.

Standards for England considers that a matter can relate to an organisation either where it directly affects the organisation, or where the organisation is otherwise concerned about the outcome of the matter.

# Q&A Paragraph 8

However, there are important limits to this:

- The matter must relate to the organisation concerned. A member of Friends of the Earth does not have a personal interest in all issues that affect other members of Friends of the Earth, and the same principle applies to political organisations.
- Particular caution needs to be exercised in relation to political parties. Membership of political parties should be registered under the Code. However, given the transparently central role that political parties play in local government, it would be impractical for members to declare a personal interest in every matter on which their political party had expressed a view. This is clearly not the intention of paragraph 8.

## Q61: What is meant by a body “exercising functions of a public nature”?

The phrase “any body exercising functions of a public nature” is wide in scope and covers more than public authorities.

Case law dealing with bodies amenable to judicial review may be a helpful guide to this issue (for example, *R v Panel on Takeovers and Mergers, ex parte Datafin plc* [1987] QB 815). However, a function will usually be “of a public nature” where it is underpinned by statute or government.

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

- Does the 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 providing outsourced services 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 a member can answer ‘yes’ to one of the above questions, it is unlikely that the body is exercising functions of a public nature. Examples of bodies included in this definition are:

- development agencies
- other government agencies
- other councils
- public health bodies
- council-owned companies exercising public functions

# Q&A Paragraph 8

- arms length management organisations carrying out housing functions on behalf of the authority
- school governing bodies

## Q62: What is meant by a body “directed to charitable purposes”?

The reference to any body “directed to charitable purposes” was clearly intended to cover more than organisations that fall within the legal definition of a charity. Any organisation directed towards charitable purposes (as that term is commonly understood), to any significant degree, comes within the scope of these words. Therefore, membership of Rotary or Lions clubs are likely to require registration.

## Q63: Is membership of the Freemasons included?

Some but not all Masonic organisations are registered charities with the Charity Commission. Membership of those that are registered clearly falls within the scope of this provision.

However, the reference to any body “directed to charitable purposes” was clearly intended to also cover organisations not falling within the legal definition of a charity. Although ultimately a member must judge the matter for themselves, Standards for England believes that many Masonic organisations will fall within the scope of this provision.

This is reinforced by the United Grand Lodge of England’s description of Freemasonry as “...the UK’s largest secular, fraternal and charitable organisation”.

In the case of R (on the application of Port Regis School Ltd) v North Dorset District Council and another [2006] EWHC 742 (Admin), the judge considered a case about two councillors who were masons. They had been involved in making a decision about a planning application which was submitted by another mason’s lodge to which they did not belong. The members had not declared prejudicial interests when the matter came before the committee.

The judge said:

“I have concluded that... freemasonry does not require a freemason, when in local government, to be partial to any other freemason or to the interests of freemasonry. I have concluded that freemasonry, by the standards it requires, underpins the requirements of impartiality and fairness set by the law, for example, by requiring observance of the law of the land and that others be treated equally, and that a mason ‘...be exemplary in the discharge of [his] civil duties...’

“I have concluded that, in the circumstances of this case, membership by the two councillors of the general body of freemasonry does not give rise to apparent bias in connection with the decision of the full Council... and the application for judicial review is dismissed.”

## Q64: Is membership of religious organisations included in the scope of paragraph 8?

Generally religious organisations will not fall within the scope of paragraph 8.

# Q & A Paragraph 8

The principal purpose of most religious organisations is to provide a focus for religious worship and the common life of the particular faith community that the organisation serves. The influence of public opinion is normally not a principal purpose. Likewise, although a religion may encourage charitable virtues, this will not make it a body directed to charitable purposes.

Standards for England does not consider that paragraph 8(1)(a)(ii)(cc) was primarily intended to apply to religious organisations. However, members should register their religious organisation if one of its principal purposes is to influence public opinion or policy. Similarly, it will need to be registered if it is a registered charity or directed to charitable purposes.

## Paragraph 8(1)(a)(iii) and (iv)

- iii) any employment or business carried on by you;
- iv) any person or body who employs or has appointed you;

### Q65: What is meant by “employment or business”?

Employment or business covers any activity that generates income for the member. Employment can also cover voluntary work.

It will not cover unearned income (from property or investments) unless the person concerned plays an active role in the management of those assets.

### Q66: How much detail do members have to include in the register about their employment or business?

Lengthy or detailed descriptions are not required here as the purpose of the entry is to identify the interest.

The member’s job title will normally be sufficient to identify the nature of their employment. A brief description of the nature of a business will also be acceptable. Where the member is employed, the name and address of the employer should also be given.

### Q67: What is meant by the requirement to register the name of the person who has “appointed” the member?

The phrase “has appointed you” in paragraph 8(1)(a)(iv) is somewhat obscure. It applies to bodies with which a member has a traditional employer/employee relationship and, probably, a contract of employment. It is also intended to cover organisations that have appointed the member to an office, for example to the board of a government agency or as a magistrate.

Standards for England does not consider that this paragraph obliges self-employed members to register a list of all their clients. Such a requirement would clearly be disproportionate and involve the disclosure of confidential commercial information.

# Q & A Paragraph 8

Nevertheless, regular clients may be classed as a “person with whom you have a close association” and so fall within the meaning of paragraph 8(2)(a). This means a member will have to declare a personal interest in certain circumstances (see Q89).

The phrase will apply to members who have been appointed to a particular post but who have not yet taken up employment.

## Paragraph 8(l)(a)(v)

- v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

### Q68: What details does a member have to register about his or her political funding?

Standards for England does not draw a distinction between direct financial assistance such as payments of money directly to the councillor for election or other expenses, and indirect assistance such as payment for election posters or leaflets.

Members should register any person or organisation who made a financial contribution (whether direct or indirect) to their election campaign or who assists them with the costs of carrying out their duties. Standards for England considers that this requirement applies to future, as well as past, election campaigns. This may include the member’s political party.

Members should also register any person or organisation providing premises that relate to a member’s official duties, such as the location of a ward surgery, unless the member is paying a commercial value to use them.

Members are not required to register details of their political group’s funding.

## Paragraph 8(l)(a)(vi)

- vi) any person or body who has a place of business or land in your authority’s area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

### Q69: What is meant by “place of business”?

Place of business refers to business premises rather than a piece of equipment (such as a telephone box or an electricity substation).

However, if the person or body owns the land on which a piece of equipment such as a telephone box or an electricity substation is situated, then the requirement to register will apply because the body concerned will have “land” in the area.

# Q & A Paragraph 8

## Q70: What is meant by “beneficial interest”?

A beneficial interest is one where the owner of the interest is entitled to benefit from the asset concerned.

Such an interest can arise directly through the legal ownership of an asset, or indirectly where the member concerned is the beneficiary of a trust.

Use of the term “beneficial interest” excludes those who hold assets under a trust but are not beneficiaries of that trust. In such situations the trustee holds the legal title to the assets in question but has no beneficial interest to register.

## Q71: What does a “class of securities” mean?

The term “class of securities” includes any instrument (such as a share, stock, bond or option) that indicates some form of ownership rights or creditor relationship with a particular body.

In practice, shares are the most commonly encountered form of securities.

## Q72: What does “nominal value” mean?

The nominal value of shares is usually the face value declared on the share certificate when issued. This contrasts with its market value, which can often be considerably more but may be less.

A nominal value of more than £25,000 is set for the inclusion of shareholdings in the publicly available register of interests. Therefore, only very substantial shareholdings need to be included in the publicly available register of interests.

A member who holds a small number of shares in a large public company of the kind that result from a privatisation issue, or a building society becoming a company, is unlikely to need to register them.

However, this high threshold is considerably offset by the alternative criteria (more than one hundredth of the total issued share capital). Comparatively modest shareholdings in smaller companies will be caught by this requirement.

## Paragraph 8(I)(a)(vii)

- vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

## Q73: How much detail is required by the description of “any contract”?

Enough detail should be given to identify the contract, such as the date and a brief description of the goods, services or works being contracted for.

# Q & A Paragraph 8

There is no requirement to state the value of the contract or its terms.

## Paragraph 8(l)(a)(viii)

- viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

### Q74: Do members have to declare all “gifts or hospitality” they receive?

A member only has to declare those gifts or hospitality received as a member.

The member must apply honesty and common sense when they consider how receipt of a gift might be interpreted. For example, if the member is the chair of the planning committee and a birthday present arrives from an applicant just before a planning application is due to be considered, then the member needs to think about how this would be interpreted by a reasonable member of the public.

A member should register gifts and hospitality if they could reasonably be viewed as relating to a member’s official duties. This will not normally include gifts from friends or family.

### Q75: Does the value of £25 apply to each individual gift or to the total value of gifts given? How does the notification threshold of £25 work in practice?

A degree of common sense needs to be applied here. Where a series of small gifts come from the same source over a short period of time and the cumulative value of the gifts is over £25 they ought to be registered.

### Q76: Does a member have to declare gifts that are refused?

No. The Code of Conduct only requires a member to declare those gifts that are accepted.

### Q77: Does a member have to declare the source of gifts?

Yes. Standards for England believes that the donor should be registered. Without such information the register will be of very little use.

### Q78: What does “hospitality” mean?

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

### Q79: How should members assess the value of hospitality received?

Standards for England believes that the best way to preserve transparency is for members to assess the hospitality on offer, whether it is accepted or not.

This is because it would clearly not be in the member’s interests to be drawn into arguments about how much they themselves ate or drank at a particular occasion. For example,

# Q & A Paragraph 8

members may find themselves at a function where relatively lavish hospitality is on offer but they choose not to accept it. A member may go to a champagne reception but only drink a glass of orange juice.

As a guide the member should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. Clearly where the member is in any doubt the prudent course is to register the hospitality.

## **Q80: Do members have to declare hospitality extended to them in the course of their authority's business, such as official dinners or business lunches?**

The focus of the Code of Conduct is on the source of the hospitality and its nature.

Standards for England does not consider that hospitality should be registered where it is provided 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. Members might meet dignitaries or business contacts in council offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality.

## **Q81: What is the Code of Conduct's position on the mayor or chair of an authority?**

There are no special rules for those who serve as mayor or chair of an authority.

Gifts that are clearly made to the authority, for example a commemorative goblet which is kept on display in the authority's offices, do not need to be registered in the member's register of gifts and hospitality.

However, such gifts ought to be recorded by the authority for audit purposes.

Although the mayor or chair may attend many social functions, they are not exempt from the requirement to register hospitality. However, where the hospitality is extended to the office holder for the time being rather than the individual, Standards for England takes the view that there is no requirement under the Code to register the hospitality.

The question a member 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.

## **Q82: Should details of gifts and hospitality be available for public inspection?**

Once three years have passed since members registered the gift or hospitality in their register of interests, their obligation to disclose that interest to any relevant meeting ends. It is the date of registration that is important, not the date the gift or hospitality was received.

# Q & A Paragraph 8

## Q83: For how long do members need to declare the fact that they received a gift or hospitality to any relevant meeting?

Once three years have passed since members registered the gift or hospitality in their register of interests, their obligation to disclose that interest to any relevant meeting ends. It is the date of registration that is important, not the date the gift or hospitality was received.

## Paragraph 8(l)(a)(ix)

- ix) any land in your authority's area in which you have a beneficial interest;

## Q84: How much detail is required of land-holdings?

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

An address and, where the address is not sufficient, a field number or map reference will usually meet the requirement. A plan identifying the land may be useful in some situations but is not a requirement.

## Paragraph 8(l)(a)(x) and (xi)

- x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
- xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

## Q85: Do you have to register the land-holdings of your employers or bodies you have shareholdings in?

No. There is no requirement to list the land-holdings of companies or corporate bodies included in the register. The only requirement is to register any tenancy between such bodies and the authority. Obviously, members can only be expected to register those they ought reasonably to be aware of.

## Paragraph 8(1)(b) and (2)

- 1) You have a personal interest in any business of your authority where...
  - b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:
    - i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
    - ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
    - iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- 2) In sub-paragraph (1)(b), a relevant person is:
  - a) a member of your family or any person with whom you have a close association; or
  - b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### Q86: What does “well-being” mean?

The use of the term “well-being” is a good example of the broad drafting of paragraph 8.

Well-being can be described as a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their well-being. It is not restricted to matters affecting a person's financial position.

The range of personal interests is, accordingly, likely to be very broad.

### Q87: What does “to a greater extent than” mean in the context of paragraph 8?

No personal interest will arise where a matter affects the member or a relevant person (see paragraph 8(2)) to the same extent as other council tax payers, ratepayers or inhabitants of the electoral division or ward affected by the decision.

# Q & A Paragraph 8

So, for example, members would only have a personal interest in a planning application which affected them more than others in the ward affected by the decision.

In Greater London the reference to electoral division or ward is replaced by a reference to the “Assembly constituency”. For members in other areas where there are no electoral divisions or wards (typically the case in the areas of small parish councils, police, fire and parks authorities) the reference is to council tax payers, ratepayers or inhabitants living in the whole area.

## Q88: Who is classed as “a member of your family”?

A “member of your family” should be given a very wide meaning.

It includes:

- a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity)
- a parent
- a parent-in-law
- a son or daughter
- a stepson or stepdaughter
- the child of a partner
- a brother or sister
- a brother or sister of your partner
- a grandparent
- a grandchild
- an uncle or aunt
- a nephew or niece
- the partners of any of the people above

The term is wide enough to cover anybody related to a member by birth, marriage or civil partnership.

## Q89: What is a “close associate”?

The term “close associate” is a very broad one which is not qualified by a precise definition in the Code of Conduct.

# Q & A Paragraph 8

A person with whom a member has a close association is someone that they are in either regular or irregular contact with over a period of time, who is more than an acquaintance.

Standards for England would suggest that it is someone a reasonable member of the public might think they would be prepared to favour or disadvantage when discussing a matter that affects them because of their connection with them.

It may be a friend, a colleague, a business associate or someone whom the member knows through general social contacts. A closer relationship is implied than mere acquaintance.

Members and monitoring officers might wish to consider the following questions when deciding whether a close association exists:

- How many times do the two people meet?
- Where do they meet?
- Do they regularly attend the same social events?
- Do they know each other's families?
- Do they visit one another's homes?
- Do they have regular business dealings?
- Do they work for the same organisation?
- Are they close or connected in other ways?

These questions should never be taken in isolation. It is the cumulative evidence of these factors and others like them that will establish a close association.

A certain amount of caution should also be exercised. Most members know each other and will often attend the same functions because of their positions in the community.

A level of relationship above and beyond that which usually exists between colleagues and political associates will be required to establish the existence of a close association. Simply sitting on the same committee as a fellow councillor or sharing car journeys will not create a close association in itself. However, sharing car journeys could involve the appearance of bias in the right circumstances. See *R (On the application of Gardner) v Harrogate Borough Council* [2008] All ER (D) 310.

## Q90: What about enemies?

Circumstances will arise where there is clear personal hostility or resentment between two people. For example, this could be after an acrimonious divorce or where one person has been involved in the termination of another person's employment.

Where such hostility or resentment exists between a member and someone affected by an issue before the authority, it seems likely that a personal interest will arise. Paragraph 8 does not appear to have been drafted with this situation in mind but Standards for England's

# Q & A Paragraph 8

view is that in these circumstances a member's "well-being" will be affected (see APE 0450). It is also possible that such people may be individuals with whom the member has a "close association".

## Examples of personal interests:

- a) A member has a niece. The niece has recently moved in with her boyfriend who is employed by a local building firm. The firm puts in a bid for work from the authority. The member will have a personal interest (but not necessarily a prejudicial one).
- b) A member has an old friend whom she has known since their schooldays. They live 30 miles from each other but meet for lunch two or three times a year. The member's friend has a substantial shareholding (nominal value £20,000) in a business that has been built up by her family for many years, although the friend plays no part in running the business.  
The business is likely to be affected by major redevelopment proposals. The member will have a personal interest but may be ignorant of its existence (see Question 91 below). The interest will not necessarily be prejudicial.
- c) A member has grandchildren who regularly use the authority's school bus service. The member will have a personal interest in relation to any discussion of the school bus service. This will only become a prejudicial interest when it directly affects the child's school.
- d) A member has an uncle whom he has not met for ten years. The uncle's wife is on the board of governors of a local school. The member will have a personal interest (but not necessarily a prejudicial interest) in matters affecting the school's financial position.

In all these examples, the connection would need to be known or ought reasonably to be known by the member before it is necessary to declare it at a meeting.

## Q91: What if I am not aware of my personal interest?

A member's obligation to disclose a personal interest to a meeting only applies when they are aware of, or ought to be aware of, the existence of the personal interest.

Clearly you cannot be expected to declare something of which you are unaware (see paragraph 9(4) of the Code of Conduct). It would be impractical to expect a member to research into the employment, business interests and other activities of all their close associates and relatives. So, in example b. above, the member does not need to declare an interest in the redevelopment proposal if she does not know of her friend's shareholding, but otherwise she would have to do so.

However, a member should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, they should have been aware of.

# Case examples

## Paragraph 8

### Example 1

A high court case about what “well-being” means.

Murphy v Ethical Standards Officer of the Standards Board for England [2004] EWHC 2377 (Admin) concerned a councillor who had participated in the consideration of a report by the Local Government Ombudsman (LGO), which criticised him for failing to declare an interest and withdraw from a meeting of the council’s planning committee.

Mr Justice Keith cited the content of Q86 with approval. He considered that it would have been “entirely natural for [Councillor Murphy]...to want to salvage his reputation by getting his council to express dissatisfaction with the report”. Therefore it was right to regard the matter as affecting his well-being.

Councillor Murphy argued that he was not unduly troubled by the LGO’s report and therefore had no personal interest. However, the court said that it was necessary to consider the matter objectively from the point of view of “an informed outsider”.

### Example 2

A high court case about who decides whether an interest arises.

In the case of Scrivens v Ethical Standards Officer [2005] EWHC 529 (Admin) Mr Justice Stanley Burnton said:

“Whether a member has a personal or a prejudicial interest is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant. The test for a failure to comply with the Code by failing to comply with [the paragraphs dealing with personal and prejudicial interests] is similarly objective.” A situation where there was clear animosity between a member and a candidate for co-option to a council.

A member and her husband were in the final stages of an acrimonious divorce.

The husband put himself forward as a candidate for co-option to the council. His estranged wife was present at the meeting in which the council voted for an election rather than co-option, even though her estranged husband was the only candidate and there were two vacant places. She proposed the resolution for an election. She also attended the meeting at which her estranged husband lost the vote for co-option.

The ethical standards officer considered that the breakdown of the relationship between the member and her estranged husband was such that a member of the public, with knowledge of the facts, would reasonably regard it as so significant as to be likely to prejudice the member’s judgement of the public interest.

The ethical standards officer concluded that the member did have a prejudicial interest in the consideration of her estranged husband’s co-option and that she should have withdrawn from the meetings that dealt with this matter.

# Case examples

## Paragraph 8

**Note:** under the new Code, this situation would not give rise to a prejudicial interest as it would be unlikely to affect the estranged husband's financial position and does not concern a regulatory matter. However, paragraphs 5 and 6(a) might apply.

### APE 0450

The member was a parish councillor. He was also a member and Treasurer of a development trust ("the DT") which was a voluntary, non-charitable organisation set up to, amongst other things to promote social, cultural, economic and environmental regeneration in the area of the parish council. The member was not appointed or nominated to the DT by the parish council.

During 2007 and 2008 the DT had been working to provide village signs at various locations in the area. Whilst the parish council had no objection to the principle of such signs, their design was a matter of controversy. Lottery funding had been obtained for the manufacture of the signs and they had been made. The parish clerk called an extraordinary general meeting of the parish council. The agenda for the meeting showed only one item of business namely "Village Signage".

It was found that, without the support of the Parish Council, it was unlikely that the signs would be erected. The member was present and participated in the debate. He declared no personal interest in the single agenda item although his involvement in the DT and the signage project was well known. He seconded the motion proposed by another member that the proposed signs be accepted. This was voted on and approved.

The Appeal Tribunal agreed with the Investigating Officer's report which concluded that the member did not have a personal interest that required registering. There was no question of the decision having any bearing on the member's financial position, so the issue was about the effect on his well-being.

On the facts, the Appeals Tribunal concluded that it was more likely than not that the contentedness and therefore well-being of the member would have been affected to a greater extent by the decision of the parish council at its EGM than that of the majority of the tax payers and inhabitants of the area. He was the Treasurer of the voluntary organisation which had a longstanding project to erect the signs and he himself supported the project as demonstrated by his seconding of the motion for the acceptance of the signs. Lottery funding had been secured for the signs, they had been made, and an inability to erect them would at the very least have led to additional complications for the Treasurer of the DT. Acceptance of the signs in this context was likely to have a greater effect on him than the majority of other tax payers, rate payers and inhabitants of the parish.

The Appeals Tribunal found that the member had a personal interest which should have been declared at the meeting and that he should undergo training. They found that the censure of the member by the standards committee was disproportionate to the breach.

### [Decision](#)

# Case examples

## Paragraph 8

**LGS/2009/0457**

This appeal concerned, amongst other things, a planning application by a supermarket in which the member had participated. The tribunal noted that the member had made a declaration of a personal interest when the issue was considered but it was alleged that the declaration was incomplete because he had not declared his contacts with a supermarket chain. The Standards Committee's representative argued that the member had a personal interest because he was intent on having a supermarket on the site and it would affect his personal well-being. The tribunal did not agree with this and was of the view that the member did not have a personal interest as such in the application. The tribunal considered that this was too remote and that although the member might have wanted to see a supermarket on the site this would not have affected his personal well-being in such a way as to be a personal interest. However this was not to suggest that councillors should not disclose to the meeting when they had contacts with developers, had been lobbied or similar.

[Decision](#)

# Paragraph 9

## Disclosure of personal interests

- 1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- 3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- 7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

# Q & A Paragraph 9

## **Q92: At what stage of a meeting should a member disclose a personal interest?**

Subject to two exceptions (see Q94 below), a member should declare the existence and nature of a personal interest as soon as consideration of the business which gives rise to the interest starts, or as soon as it becomes apparent that they have an interest in it, if this is later.

Standards for England is aware that many authorities deal with declarations of interest by an agenda item at the start of the meeting. Standards for England does not consider that this will generally be of any practical significance. There is no substantial conflict between authorities continuing to have a 'declaration of interests' agenda item and the Code of Conduct.

If members are concerned about their position they can choose to make their declaration when the item of business giving rise to the interest is reached on the agenda of the meeting.

## **Q93: When does consideration of a matter start at a meeting?**

Normally consideration starts once the relevant item on the agenda is reached. It will include the hearing of any evidence and representations or submissions from officers, interested parties or members of the public.

Consideration is not limited to discussions between members about the merits of a particular decision.

## **Q94: When is a declaration of an interest not necessary?**

A member may have already made a written declaration of an interest, which then arises at a meeting. This does not remove the need for that member to declare the existence and nature of that interest at the meeting.

The Code of Conduct's requirements about declaring interests aim to support an open and transparent system of local democracy. Consequently, a member's interests should be accessible to members of the public and the press.

Given this, a verbal declaration is normally required at any meeting where a matter arises in which a member has an interest.

However, if an interest arises under paragraph 8(1)(a)(i) and (ii) a member only needs to declare a personal interest if they decide to speak.

If the interest concerns "sensitive information" which a member does not need to include on their register of interests, they need to declare the existence of that interest but do not need to specify the nature of it.

## **Q95: How much detail is required in the declaration?**

Subject to what is said in Q94 above, members only need to give enough information for others present to be able to identify the existence and nature of the interest.

# Q & A Paragraph 9

For example, a declaration that states “this application relates to land that borders property owned by a friend of mine” is sufficient.

There is no requirement for the member in this situation to provide details of the identity of the friend, the nature of the friendship, or the friend’s details of land-holdings.

# Case examples

## Paragraph 9

### LGS/2010/0489

In this appeal the member was chairman of the local British Legion and a member of the local community council. The agenda for a meeting of the community council had an item "The British Legion Hall to discuss the future of the hall." At the start of the meeting the member declared a personal interest in the item. The item was not discussed. The obligation to disclose an interest is provided for by 9(1) of the Code of Conduct which provides "where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration". Paragraph 10(1) does not change the point at which the interest should be declared. Since the meeting did not consider the question of the British Legion Hall no duty to declare the existence and nature of his interest arose and therefore there was no breach by the member whether or not his interest in the British Legion Club was a prejudicial interest.

### [Decision](#)

# Paragraph 10

## Prejudicial interests

- 1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- 2) You do not have a prejudicial interest in any business of the authority where that business:
  - a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - c) relates to the functions of your authority in respect of:
    - i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - iv) an allowance, payment or indemnity given to members;
    - v) any ceremonial honour given to members; and
    - vi) setting council tax or a precept under the Local Government Finance Act 1992.

# Q & A Paragraph 10

## Q96: Does a prejudicial interest mean that a member also has a personal interest and vice versa?

You cannot have a prejudicial interest unless a personal interest has first been established, unless your prejudicial interest arises under paragraph 11 of the Code (see paragraph 11).

However, a personal interest is not necessarily a prejudicial interest.

## Q97: What can amount to a prejudicial interest?

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

- 1) The matter affects a member's financial interests or relates to a licensing or regulatory matter.
- 2) The matter does not fall within the exempt categories set out in paragraph 10(2)(c).
- 3) A member of the public, who knows the relevant facts, would reasonably think the member's personal interest is so significant that it is likely to prejudice their judgment of the public interest.

## Q98: How does a member judge if an interest is so significant that it is likely to prejudice judgment of the public interest?

The member needs to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation. They must also particularly consider how the circumstances are likely to impact on their judgment of the public interest.

Care needs to be taken when considering this topic. The judgment must be a reasonable one and an interest will only be prejudicial if it can objectively be regarded as significant. Almost any degree of personal involvement or knowledge of the circumstances is likely to affect a member's judgment. A member may well have been elected precisely because of their local knowledge.

For an interest to be prejudicial it must be "likely to prejudice" the member's judgment. In other words, the interest must be likely to harm or impair the member's ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that others reasonably think will positively harm the member's ability to judge the public interest objectively.

Some general principles should be considered when applying this test:

- Members should clearly act in the public interest and not in the interests of family or friends. Members are custodians of the public purse and their behaviour and decisions should reflect this responsibility.
- Situations where a member shares a personal interest with a very small number of other people (for example, where a particular part of an authority's area will be affected by a decision) should be given special consideration.

# Q & A Paragraph 10

Standards for England considers that if a member shares a personal interest with a large number of people, it is less likely that a prejudicial interest will exist.

An interest shared by a member with very few other people living in the same area is much more likely to prejudice the member's judgment than an interest that affects many people living in the area.

However, each case must be decided on its own facts. A member should also consider the nature of the relationship that gave rise to the personal interest. Members may be very close to some of their relatives but barely know others. Clearly the closer the relationship, the more likely it is that a prejudicial interest will arise.

The SOAP test described below may be used to decide whether a member of the public, with knowledge of the relevant facts, would reasonably regard an interest as so significant that it would be likely to prejudice the member's judgment of the public interest:

- Selflessness – could any and every possible decision the member made in connection with the matter be regarded as selfless?
- Objectivity – could the member be regarded as being as objective in the matter as his or her fellow members?
- Accountability – could the member's involvement in the matter stand up to public scrutiny?
- Public interest – would the public interest be harmed by the member's involvement?

## Q99: What does “affect your financial position” mean?

This phrase should be broadly construed. A member's financial position can be affected directly or indirectly, favourably or unfavourably, substantially or marginally. Also, members might have a prejudicial interest if what is being discussed at a meeting will affect the financial position of a person or body that gives rise to a personal interest.

## Q100: What does “determining of any approval, consent, licence, permission or registration” mean?

Essentially, this means making decisions about regulatory issues like planning applications, licences issued under the Licensing Act 2003, and licences issued for pet shops, dog breeding, petroleum storage, street trading and operating taxis.

Standards for England considers that the word “determining” in this context is wide enough to cover variations, additions, removal and revocation of approvals, consents, licences, permissions and registrations (including conditions attached to them).

In this context, “approval” means some form of regulatory decision-making. It does not have the wider meaning of anything the council is asked to agree to. Also, members might have a prejudicial interest if what is being discussed at a meeting will affect an approval, consent, licence, permission or registration of a person or body that gives rise to a personal interest.

# Q & A Paragraph 10

## Q101: What does “relate to” mean in this context?

This covers making decisions about issues such as applications made by or approvals sought by the member or one of their interests. However, the provision is wider than that. It could cover consideration, as a consultee, of a decision to be made by another body or person (for example, where a parish council is consulted about a planning application by the local planning authority and a member of the parish council has made the planning application).

A member who belongs to a lobby or campaign group opposing a planning application will have no prejudicial interest when the application is considered simply because it relates to the purposes of the group. However, the member would have a prejudicial interest if the lobby group had submitted the planning application or had land which was affected by it.

A member who is elected on the basis of opposing a planning application and who belongs to a lobby group set up to do so will have no prejudicial interest, since a political stance on a subject does not lead to a personal interest arising.

The issue of predetermination or bias may need to be considered in the examples above. Further information can be found in our occasional paper: [Predisposition, Predetermination or Bias, and the Code](#)

## Q102: What is the effect of paragraph 10(2)(c) of the Code of Conduct?

Paragraph 10(2)(c) provides absolute exemptions for members from the consideration of whether or not they have a prejudicial interest. The circumstances listed in that sub-paragraph cannot give rise to a prejudicial interest.

## Q 102A: When does the exemption at 10(2)(c)(vi) about setting council tax or a precept apply?

There are many different ways to present the annual budget for the next municipal year and there are many different procedures that councils use to set a council tax or a precept. At some point in the process there will be a motion which calls on members to adopt an annual and details of this will be set out in an officer report. It is the view of Standards for England that no member has a prejudicial interest in such a general motion. All members can therefore attend, debate and vote on that motion.

In the event that there are any amendments proposed to the motion which is intended to adopt the budget any "interest" a member might have in voting for cuts in one part of the annual budget so that their other organisation(s) have secure funding in another, is likely to be too remote for a reasonable person to conclude that on these facts it will prejudice their assessment of the public interest.

If an amendment were moved to the budget motion which would (for example) remove or reduce the funding of a body in which a member has a personal interest then that member would need to declare a prejudicial interest in the debate at that point. Once an amendment is dealt with, the excluded members should be able to return to the debate and continue discussions on the rest of the budget.

# Q & A Paragraph 10

The above is not entirely free from doubt and may not work in all cases. It does, however, work for the majority of cases in practice and allows members not to feel disenfranchised from one of the major tasks of a council.

## **Q103: Are there any variations for different authorities within paragraph 10(2)(c)?**

Paragraphs 10(2)(c)(i) and (ii) do not apply to the following authorities because they do not have responsibility for housing or education:

- parish councils
- police authorities
- the Greater London Authority
- the Metropolitan Police Authority
- the London Fire and Emergency Planning Authority
- fire and rescue authorities
- joint authorities
- the Broads Authority
- national park authorities

# Case examples

## Paragraph 10

### APE 0201

This example considers the role of a member as an advocate for a constituent.

A member who was a solicitor and also the leader of a council represented an applicant for a taxi licence in a professional capacity at the council's licensing committee meeting. He was not a member of the committee and was not involved in taking any decisions on the application.

The Adjudication Panel for England decided that he had a prejudicial interest in his client's application and that he could not divest himself of his member role to appear as a solicitor before the meeting. He was suspended for six months as this appeared to be a misjudgment on his part rather than action he had taken for an improper motive.

### [Decision](#)

### LGS/2010/0492

This appeal concerned a member's involvement in consideration of a report prepared for the council which responded to the outcome of a consultation exercise about residential care services and set out proposals that would form the basis of the next consultation for modernising those services. The report identified workforce issues and stated. '...changing provision will impact on staff...' and '...workforce planning will look at the skills required and establish what alternative employment/training opportunities are needed to ensure the effective use of staff...'

The member's partner was employed as a care assistant at a council run day centre identified in the report and it was evident that the member's partner could potentially be affected by the proposals outlined in the report. The standards committee had found that the member's partner was a 'relevant person' within the meaning of paragraph 8(2) of the Code. It was also found that he had a personal interest which was prejudicial in accordance with the definition contained in paragraph 10 of the Code. The tribunal agreed. In deciding a period of suspension for one month, the tribunal said that the principal purpose of a sanction is the 'need to impress upon the [member] the severity of the matter and the need to avoid repetition.' They concluded that a suspension for one month would bring home to the member the seriousness of what he has done, and send the right message to all concerned that a serious view was indeed being taken of what he had done.

### [Decision](#)

**Note:** see also case examples for paragraph 12.

# Paragraph 11

## Prejudicial interests - overview and scrutiny

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub- committee of such a committee) where:

- a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub- committee, joint committee or joint sub- committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

### **Variations between different versions of the mandatory provisions of the Code of Conduct:**

Paragraph 11 only applies to authorities operating executive arrangements.

# Q & A Paragraph 11

## Q104: What is the purpose of paragraph 11?

Paragraph 11 protects the integrity of overview and scrutiny committees.

Members of overview and scrutiny committees should be different from those members who originally took the decision under scrutiny.

The decision-makers can appear before the overview and scrutiny committee to answer questions or give evidence about the decision or action under consideration, but should play no part in the overview and scrutiny committee's deliberations.

## Q105: Can a member with a prejudicial interest appear before an overview and scrutiny committee if the public are not allowed to attend?

Yes. Under paragraph 12(2) of the Code, members with a prejudicial interest in the business before the overview and scrutiny committee will not be able to attend the meeting to give evidence or answer questions on the matter unless members of the public are allowed to attend the overview and scrutiny committee for the same purpose.

However even where members of the public are not allowed to attend before overview and scrutiny committee, the Code is overridden so that members with a prejudicial interest under paragraph 11 will be able to attend to answer questions. This is because of section 21(13) of the Local Government Act 2000 which provides as follows:

“An overview and scrutiny committee of a local authority or a sub-committee of such a committee—

- a) may require members of the executive and officers of the authority to attend before it to answer questions and
- b) may invite other persons to attend meetings of the committee”.

Section 21(13) obliges an executive member to attend an overview and scrutiny committee to answer questions so this overrides any Code provision which might prevent that happening.

An executive member should always be required to attend rather than be invited to attend. It is the view of Standards for England that there is no statutory basis for inviting an executive member to attend an overview and scrutiny committee, invitations are only relevant for persons other than executive members.

Similarly where any other member (including former executive member) is invited to attend this will override the Code provisions under paragraph 12 so that a member with a prejudicial interest can attend to answer questions.

If the member concerned sought to sit on the overview and scrutiny committee considering the decision they had been involved in then the member would have a prejudicial interest and the Code provisions would not be overridden.

The decision-makers are able to appear before the overview and scrutiny committee to make representations, answer questions or give evidence about the decision or action under consideration. It may be that, in order to answer questions which may arise, they are invited

# Q & A Paragraph 11

to remain in the room while others give their evidence. This is a matter for local determination. However, they should play no part in the overview and scrutiny committee's deliberations as this may compromise the impartiality of the scrutiny process, which must allow effective challenge free from undue influence.

A member cannot apply for a formal dispensation from the standards committee to participate in consideration of a matter at a meeting of an overview and scrutiny committee, "where that consideration relates to any decision made or action taken by any body of which that person was a member at the time the decision was taken."

## **Q105A : Can members with prejudicial interests stay in the meeting after they have answered questions and given their evidence to the committee?**

We are aware that some authorities actively encourage all their members to attend overview and scrutiny meetings to better inform and improve the quality of the authority's decision-making. Our view is that the decision of the Court of Appeal in Richardson (See [Q110](#)) would still apply in these circumstances and that normally, after their statutory role is finished, members with prejudicial interests should withdraw from the room.

# Case examples

## Paragraph 11

No case examples currently available for this paragraph.

# Paragraph 12

## Prejudicial interests - participation

1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:

a) you must withdraw from the room or chamber where a meeting considering the business is being held:

i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

b) you must not exercise executive functions in relation to that business; and

c) you must not seek improperly to influence a decision about that business.

2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### **Variations between different versions of the mandatory provisions of the Code of Conduct:**

Paragraph 12(2) does not apply to parish councils which adopt only those provisions of the Code which apply to parish councils. Parish councils need to specifically include paragraph 12(2) in their codes if they want their members to be able to make use of it.

The words in brackets in paragraph 12(2) only apply to authorities operating executive arrangements.

# Q & A Paragraph 12

## Q106: What is meant by a “meeting” in paragraph 12?

“Meeting” means any meeting of:

- the authority
- the executive of the authority
- any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees

## Q107: Does “meeting” also include informal meetings?

No. Informal meetings between members and officers and political group meetings are not covered by the requirement to declare interests (however, see Question 4 for a detailed examination of the topic including when the requirement does apply).

Nevertheless, paragraph 6(a) of the Code of Conduct, which prevents members from using their position improperly, applies at all times.

A member should not use pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest. If they do so they are very likely to fail to comply with paragraph 12(1)(c) of the Code by improperly seeking to influence a decision.

## Q108: Should a member declare the existence and nature of a personal interest, which is also prejudicial, before withdrawing?

Yes. All prejudicial interests are also personal interests.

A declaration under paragraph 9 should be made and minuted prior to the withdrawal required under paragraph 12.

## Q109: What part can a member play in an item of business in which they have a prejudicial interest?

The general rule is that a member must leave the meeting room as soon as the relevant item of business is being considered.

However, a member can stay if asked to make representations, answer questions or give evidence, provided that the public can attend for the same reason. Once the member has done so they must leave.

If the meeting decides that a member should finish speaking, despite their intention to say more, they must comply with its decision.

## Q110: Can a member declare a prejudicial interest, withdraw from the meeting and remain in the room where the meeting is being held?

No. A member must withdraw from the room and take no further part in the discussion. Although the public may be allowed to observe the discussion and the vote, members are not allowed to do so and must leave the room immediately. Failure to do so may be viewed as an attempt to improperly influence the meeting.

# Q & A Paragraph 12

The Code of Conduct's intent here is that a member's presence alone can influence a decision or discussion. For example, it is not acceptable for a member to observe proceedings from the public gallery (see case example 1 - R v North Yorkshire County Council ex parte Richardson [2003] EWHC 764 (Admin)).

## Q111: Under what circumstances can a dispensation be obtained?

The circumstances in which a dispensation can be obtained are set out in Regulation 17 of the Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255).

A dispensation can be obtained in two distinct circumstances:

- When at least 50% of those entitled to participate (excluding those already granted dispensations) are prevented from doing so by a prejudicial interest.
- When the political balance of the decision-making body (excluding those already granted dispensations) is upset.

Dispensations are not granted as a matter of course. The standards committee must be satisfied, in the light of all the circumstances of the case, that it is appropriate to grant the dispensation.

Although there is some ambiguity in the regulations, it is the view of Standards for England that where there is no requirement on a council to achieve political balance on its committees (e.g. parish councils) a dispensation cannot be granted based on the second criterion above.

## Q112: How is a dispensation obtained?

Dispensations must be obtained by written application made to the standards committee. The power to grant a dispensation cannot be delegated either to individual members of the standards committee or to officers.

## Q113: Should a member publicly declare that they are relying on a dispensation?

Yes, although there is no requirement to do so in the Code of Conduct or the regulations, Standards for England strongly recommends that members publicly declare they are relying on a dispensation. They should do this at the same time as they state the existence and nature of their interest, in order to take part in the consideration of a matter where they have a prejudicial interest. A dispensation does not excuse a member from the need to declare an interest.

## Q114: Is it possible to obtain a continuing or ongoing dispensation?

Yes. Regulation 17(2)(a) effectively allows a standards committee to grant a dispensation for a period of up to four years.

The standards committee needs to be satisfied that the criteria for granting a dispensation would be met for the whole period. Standards for England considers that such circumstances will be rare.

# Q & A Paragraph 12

## Q115: What is meant by an 'improper influence'?

Paragraph 12(1)(c) does not entirely prevent members seeking to influence matters in which they have prejudicial interests. Not all attempts to influence a decision will be 'improper'.

For example, members who submit a planning application may address a meeting at which their application is being considered if the public could do likewise. They could also appoint a planning agent to represent their interests before the planning committee.

Improper influence would be any attempt by members to use their position to further their own interests, in a way that would not be open to ordinary members of the public. For example, private lobbying of members, or officers, involved in the decision-making process is a clear example of improper influence.

# Case examples

## Paragraph 12

### Example 1

This case shows that a member with a prejudicial interest cannot attend a meeting as a member of the public.

A member with a prejudicial interest in a planning issue was told that he should not attend a council meeting which was considering the issue. He attended anyway and said that he was attending as a member of the public.

Lord Justice S. Brown in the Court of Appeal in *R. (on the application of Richardson) v North Yorkshire County Council* [2003] EWCA Civ. 1860 said:

“A member of the authority attending a council meeting cannot, in my judgement, simply by declaring that he attends in his private capacity, thereby divest himself of his official capacity as a councillor. He is still to be regarded as conducting the business of his office. Only by resigning can he shed that role.”

The following **three** case examples indicate the sort of prejudicial interests that can lead to serious sanctions.

### APE 0138

A councillor failed to withdraw from a council meeting that was considering his son's licensing application for an entertainment venue. He was given a disqualification of 18 months.

[Decision](#)

### APE 0148

A town councillor failed to withdraw from a council meeting about the dismissal of a council employee, who was his niece. He was given a disqualification of two years.

[Decision](#)

### APE 0151

A parish councillor took part in a council meeting about a playing field despite the fact that he was the chairman of a football club that wanted to use the field. He was given a disqualification of three years.

[Decision](#)

### APE 0395

In APE 0395, an appeal from a standards committee, the member declared a personal and prejudicial interest and withdrew from the meeting. He returned after the conclusion of the item to chair the remainder of the agenda.

# Case examples

## Paragraph 12

The standard agenda item enabling members of the public to raise issues they would like to be included on the next meeting's agenda was then considered. At this point, a member of the public expressed dissatisfaction about the minimal progress made in reaching a decision on the item in which the chair had previously declared the interest. A short exchange then followed between some councillors and that member of the public.

The tribunal decided that this exchange did not constitute consideration for the purposes of the Code, as there was no intention to have a further discussion on that item.

[Decision](#)

### APE 0448

The member appealed against a suspension for 3 months.

He was a leading and long-standing member of a Scout Association. An application for remission of charges for the organisation was considered by the council. He declared a personal interest but remained in the room and did not speak. He was shown advice of the monitoring officer on his situation at the start of the meeting. He did not have time to consider it properly and the Tribunal was satisfied that his actions in the meeting were not in deliberate disregard of the advice and were a mistaken interpretation of the position.

The tribunal accepted the finding by the standards committee that he did not seek to improperly influence the proceedings. The tribunal decided that given his long-standing and close association with the Scouts and his position of responsibility within a scout group a member of the public would reasonably consider that his interest was so significant that it was likely to prejudice his judgment of the public interest. He had subsequently undergone training, learnt from it and indicated that in future he would declare a personal and prejudicial interest and leave the room. In the light of these findings a censure was imposed.

[Decision](#)

### LGS/2009/0477

This appeal concerned a disputed right of way over a member's land.

The tribunal found that in circulating a misleading and inaccurate letter the member attempted to use his position as a councillor to secure a personal advantage for himself by persuading a committee to decide on this personal matter in his favour. They concluded that he sought to improperly influence a decision of the Committee about his personal business in breach of paragraph 12(1)(c) of the Code. The tribunal recognised that members had a right under paragraph 12 (2) to address the committee but that was restricted to remaining in the meeting to make representations, answer questions or give evidence. There was no right to submit written evidence let alone a letter which undermined the integrity and professionalism of an officer.

[Decision](#)

# Paragraph 13

## Registration of interests

1) Subject to paragraph 14, you must, within 28 days of:

- 1) this Code being adopted by or applied to your authority; or
- 2) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

# Q & A Paragraph 13

## **Q116: Who should members notify when registering their interests?**

Members must notify their monitoring officer. Parish councillors must notify the monitoring officer of the district council or unitary authority for the area in which the parish council is situated.

Some difficulties can arise in relation to parish councils. The obvious point of contact for information of this type is the parish clerk. The clerk needs to have an up-to-date copy of the register of interests in order to comply with the public access requirements of Section 81(6) of the Local Government Act 2000. It is acceptable for the parish clerk to act as the point of contact between parish councillors and the relevant monitoring officer.

However, members must ensure that there is a system in place for the parish clerk to pass on immediately any information to the relevant monitoring officer. Each individual member is ultimately responsible for ensuring that the relevant monitoring officer is in possession of all the required information.

## **Q117: What happens when a member is re-elected or reappointed or a new Code of Conduct is adopted?**

Members are under an obligation to notify the relevant monitoring officer of their interests within 28 days of election or appointment.

This obligation also applies in relation to re-election and reappointment. It is also likely to apply when a new Code is adopted.

Members are under a continuing obligation to ensure that their register of interests is kept up-to-date. The obligation to re-register in the case of re-election, reappointment or a new Code will usually be satisfied by a letter that confirms that the details held by the monitoring officer are still accurate and that no additional interests need to be added.

# Case examples

## Paragraph 13

No case examples currently available for this paragraph.

# Paragraph 14

## Sensitive information

- 1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- 2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- 3) In this Code, "sensitive information" means 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.

# Q & A Paragraph 14

## **Q118: What is meant by “sensitive information”?**

Sensitive information is information which a member considers could create a serious risk that the member or someone in the member’s household would be subjected to violence or intimidation, if it became publicly available.

It may include instances where a member is employed in areas of sensitive employment, such as certain types of scientific research, or where a member is a magistrate or judge involved in criminal cases where they are likely to receive threats.

## **Q119: 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. A member must notify the monitoring officer of the information which they think is sensitive.

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.

## **Q120: What happens if the information stops being sensitive?**

A member 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.

The information will be included in the authority’s register of interests.

# Case examples

## Paragraph 14

No case examples currently available for this paragraph.

# Procedural issues

## Other significant cases about procedure

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# Procedural issues

## Investigations

### Scope

#### APE 0401

The tribunal found that the original complaint did not fix the scope of the investigation – it is simply the initiating act. They found that it was legitimate for the investigating officer to ultimately allege a breach of the Code not identified by the complainant.

#### [Decision](#)

#### LGS/2010/0479

On appealing the decision of a standards committee, the appellant raised a procedural issue about the ability of the investigator appointed by the Deputy Monitoring Officer to consider additional potential breaches of the Code, beyond the breach they were originally charged with investigating. The appellant queried whether the investigator, on finding that another part of the Code may have been breached, should have referred the matter back to the Deputy Monitoring Officer.

The tribunal found that it was entirely proper for the investigator to consider, based on the facts of the allegation, whether more than one breach had occurred. Both regulation 14 of the Standards Committee (England) Regulations 2008 and Section 57(A) of the Local Government Act 2000 (as amended) make it clear that it is the allegation that forms the substance of the investigation. What the person investigating the case was required to do was to decide whether on the facts that underlay the allegation there was a breach or breaches of the Code. One set of facts can, and often does, involve more than one breach of the Code.

#### [Decision](#)

### Role of investigator

#### APE 0401

The appeals tribunal found that it was legitimate for an investigating officer to “chaperone” a witness. Where a witness is called by the investigating officer to support a finding in their report of an alleged breach of the Code, there was no obligation on the investigating officer at that stage of the process to adopt an impartial stance.

#### APE 0403

The appeals tribunal made clear that the role of the investigating officer is to collect together the evidence and then present this to the standards committee. It was not, in any sense, the investigating officer’s evidence.

# Procedural issues

It was also part of the investigating officer's role to give their views on whether the evidence substantiated a breach of the Code. This stood as advice to the standards committee to take into account, but which it was not obliged to follow.

## APE 0441

In this case the investigating officer was the monitoring officer. The role of the investigating officer is a difficult task and he needs to be in a position in which he can act impartially at all times. If a person does have knowledge which would assist by way of evidence or has played any material role in the circumstances given rise to the complaint, he should not be appointed as investigating officer. It would be good practice to have in place a reciprocal arrangement with neighbouring authorities to provide investigating officers when there is clear difficulty in using the authority's own officers.

# Procedural issues

## Hearings

### Jurisdiction

#### APE 0403

The appeals tribunal decided that a standards committee does not exceed its jurisdiction by dealing with a matter that has not been complained about. The investigating officer's report did not reflect the complainant's letter in exact terms. However, the tribunal decided that the facts and matters which gave rise to the breach were clearly before the standards committee. The tribunal therefore decided it was not a matter beyond the standards committee's jurisdiction.

[Decision](#)

### Hearing procedures

#### APE 0399

The appeals tribunal concluded that while standards committees are free to regulate their own procedures, following the guidance produced by Standards for England provides a firm procedural foundation for the hearings. Not doing so in this case may have led to a degree of unfairness at the hearing.

[Decision](#)

### Evidence

#### APE 0394

The appeals tribunal advised that where an allegation is about a failure to declare a personal interest at a meeting, it is essential that the committee satisfies itself that the member was present at the relevant meeting. This is on the basis of the available evidence, usually in the form of committee minutes. The standards committee should not expect the member to prove that he was not present at the meeting.

[Decision](#)

### New evidence

#### APE 0399

An appeal tribunal decided that a situation might arise where the facts of the case are undisputed and the case is being heard in the absence of the subject member. This is on the basis of papers served on them before the hearing. In such situations, further evidence should not be introduced to the standards committee without giving the subject member the opportunity to look at the substance of that evidence. The subject member is then able to

# Procedural issues

make a decision about whether to attend the hearing to rebut the evidence or to make written representations about it.

[Decision](#)

## APE 0439

The appeals tribunal decided to take new evidence into account in examining this appeal. The tribunal recognised that the two additional matters raised by the member did not entirely satisfy the test in *Ladd v Marshall* (1954) CA 745, that is, 'In order to justify the reception of new evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.' However, in the view of the tribunal, the importance of the issues appeared not to have been recognised by the member at the time of the standards committee hearing and there was no prejudice to a third party by admission of the issues.

[Decision](#)

## Documentation

### APE 0441

The appeal tribunal stated that the circulation of papers prior to the hearing was a fundamental requirement, as is ensuring that all persons have access to the same documentation. It is not unreasonable to assume that a party will have copies of documents he has provided. However as a matter of good practice, paginated bundles should be prepared for all parties and members of the standards committee.

[Decision](#)

## Witnesses

### APE 0441

The appeals tribunal considered that a standards committee has a duty to consider the relevance of the evidence to be given by potential witnesses and to give reasons for not calling witnesses. The same considerations applied to an investigating officer's refusal to interview potential witnesses.

[Decision](#)

## Rejecting the findings of an investigator

### APE 0463

The standards committee had rejected the investigating officer's finding of no breach of the Code. This, in part, formed the basis for the appeal to the tribunal. Whilst the power to

# Procedural issues

decide whether or not a breach has occurred rests with the committee and the committee is entitled to accept or reject the findings of the investigating officer, the committee needs to provide strong and clear reasons as to why it has rejected the conclusions reached after the investigation. In this case, the tribunal found that the investigating officer had put together a very good report which should be given considerable weight. The standards committee rejected his findings but did not provide any cogent reasons as to why which, given the strength of the investigating officer's reasoning, was essential.

## [Decision](#)

### **Adjournment as a result of other proceedings**

#### **APE 0415**

In this case the respondent applied for an adjournment of the hearing on the basis that it was inextricably linked to an employment tribunal case which would be considering many of the same facts. The respondent felt that the employment tribunal could be prejudiced by the APE tribunal and that it should have primacy. As both cases were civil matters, no criminal matters could be prejudiced and the tribunal could not see why one case should take precedence over another. Although some of the same facts and events would be considered at both hearings, those present would be required to tell the truth and the mere fact that an issue could be discussed at both hearings did not of itself cause prejudice. Also, there was a public interest in both hearings proceeding to a conclusion in a timely matter. The tribunal therefore decided that an adjournment was not appropriate.

## [Decision](#)

### **Bias caused by membership of the standards committee**

#### **APE 0366**

The member drew the attention of the appeals tribunal to the fact that the hearing panel of the standards committee was not politically balanced. He asserted that it should have been and that, in the absence of this, the panel must be held to have been biased. He pointed out that three out of the five members of the panel were Conservatives and that he was a Liberal Democrat. Two Conservative members declared a personal interest in that they knew the complainant. They were not asked to explain the nature or extent of their personal interest. The Deputy Monitoring Officer reported that immediately before the hearing he had been advised that one of the 2 Conservative councillors was a friend of the complainant. He had taken this up with the councillor who denied that he and the complainant were friends.

The tribunal was of the view that the panel of the standards committee could not be impugned on the grounds of bias, either on account of the political composition of the panel or the fact that two members had declared personal interests (as opposed to prejudicial interests). It was clear from the legislation that Parliament did not require standards committees and by necessary implication, hearing panels of such committees, to be politically balanced. The tribunal did not consider that the fact that the majority of the councillors on the panel were Conservatives, in and of itself, could undermine the decision on grounds of bias. It recognised that in an exceptional case it may be necessary for attention to be paid to the political composition of the panel.

# Procedural issues

With regard to the declarations of personal interest the role of the legal adviser did not go beyond providing advice to the members concerned. It was not his responsibility to actively investigate the background. That said, where a councillor raised the possibility that a councillor was a friend of the complainant he acted entirely properly in questioning the councillor further. The tribunal noted that there was no evidence before it to contradict the councillor's denial that he was a friend of the complainant. It was of the view that in these circumstances, there was nothing to indicate that the councillor in question had to declare anything beyond a personal interest and thus the argument that the panel was biased for this reason was not well founded.

## [Decision](#)

### APE 0441

During an appeal allegations of bias were made concerning members of the standards committee. The appeals tribunal considered a standards committee had a duty to consider any allegation of bias and should hear those allegations. The duty is a continuing one and is relevant in relation to the bias shown at a hearing. It is good practice for a committee to ensure that its proceedings are free from actual bias or perceived bias. In this respect, a committee should take a proactive role rather than relying on individuals to declare interests.

## [Decision](#)

### LGS/2010/0521

The councillor claimed that some members of the Sub-Committee were potentially biased against him. He asserted that, because of past conflicts between them, one councillor could not be seen as an objective and fair member of the hearing panel and that both independent members were known to be supporters of the Conservative Party and, therefore, possibly biased against him.

The Tribunal considered that a standards committee has a duty to consider any allegation of bias and should hear those allegations. The duty is a continuing one and is relevant in relation to any bias shown or perceived at a hearing. It is good practice for a standards committee to ensure that its proceedings are free from actual bias or perceived bias. In this respect, a committee should take a proactive role rather than relying on individuals to declare interests or to express subjective views as to their impartiality.

The tribunal found that insufficient consideration was given to the issue by the panel and that this was compounded by the absence of reasons for their decision. The tribunal added that the inclusion on the panel of members of a different party political persuasion does not in itself give rise to bias. Having considered all the evidence, the tribunal did not find that there was actual bias against the appellant, but expressed concern that the panel appeared not to have addressed the councillor's concerns by allowing him to express them fully and responding to them with adequate and cogent reasons.

## [Decision](#)

# Procedural issues

## Privacy

### APE 0374

The councillor made a request that submissions relating to his state of mind should be taken in private session because of the personal nature of the information which he wished to disclose and the impact such information might have on his family. There was a discussion, in private session, between the parties and the tribunal, and an adjournment for the councillor and his representative to consider the points raised. He decided that he would not be prevented from fully putting his case by the hearing being in open session and agreed to proceed on that basis.

#### [Decision](#)

### APE 0406

This case concerned allegations that a councillor had failed to comply with the Code by being convicted on three counts of making indecent images of a child and four of possessing indecent images of a child. One of these counts referred to thirteen images found on a computer that had been provided to him by the council. The councillor requested that the matter be heard in private.

The tribunal decided that it was a very clear principle that proceedings in tribunals should be heard in public. The right of the public and press to attend and report hearings was a key element in ensuring that the public had confidence in the administration of justice. Thus the tribunal would require convincing evidence that there was substantial harm to either the individuals involved in the hearing or to the public interest generally before holding a hearing in private. However the tribunal did decide that his home address should not be disclosed.

#### [Decision](#)

## Adjournments

### APE 0322

The councillor was given approximately three months notice of a hearing. The day before it was due to take place he requested an adjournment on the basis of ill health. He produced a medical note stating that he should refrain from work for 2 weeks on account of stress. The Chairwoman issued a direction that the case be adjourned and that if the councillor wished to request a further adjournment he should produce a "medical report" and that this was to include an opinion about whether he was fit to attend the hearing. The day before the re-scheduled hearing the councillor requested a further adjournment on the basis of ill health. He provided a statutory sick note from the doctor stating that he should refrain from work for 2 weeks on account of stress. The Chairwoman did not grant an adjournment on the grounds that this was not a medical report and that the doctor had not given an opinion that the councillor was not fit to attend the hearing. She issued a direction that any further communication from the doctor should contain the following information:

- 1) detail of his medical condition

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- 2) whether this meant that he was medically unfit to attend the hearing and if so, what would be the medical consequences of his attending
- 3) for how long this diagnosis was likely to last
- 4) whether there were any conditions under which the hearing could go ahead, that is, what the tribunal might do to alleviate any stress.

The tribunal was provided with a letter from the councillor's doctor on the morning of the hearing. The letter, which was extremely short, confirmed that the source of the stress was the forthcoming tribunal and that his symptoms were "headaches, sleep disorder and lack of concentration, which have led to an inability to prepare for this tribunal". On being asked to address the further information required as a result of the direction the doctor wrote a second letter which stated "This gentleman is unfit to attend today's tribunal. Please refer to my earlier letter of today".

The tribunal further delayed the start of the hearing to allow the councillor to travel to the hearing. The councillor attended and argued that it should not go ahead. He explained that the complaint had made him unwell with stress, that he had headaches and was unable to sleep. He submitted that he had not been well enough to look at the documents since they were sent to him the previous year. The tribunal decided to proceed.

On the one hand, it recognised that the councillor had produced some medical evidence that he was not fit to attend the hearing. On the other the tribunal took into account that despite the previous directions, the medical evidence did not adequately address the nature or severity of his condition and in particular the prognosis for how long this might continue. The significance of this was that, given the cause of the stress was the hearing itself, this raised the possibility that the councillor would not for some significant period of time, or indeed ever, be fit to attend the hearing. The tribunal had to take into account the public interest in the matter being resolved within a reasonable period of time. Further, the tribunal had received representations both from the ESO and the council that he was continuing in the course of conduct which had given rise to the current allegations, that is, that he was continuing to cause difficulty and upset amongst council officers and thereby impede council business. The tribunal also took into account that he was continuing to carry out some of his councillor related functions. It noted that resolution of the matter would be operative in ending the stress faced by the councillor. The tribunal took account of the fact that he had at no stage availed himself of the opportunity of responding to the allegations and that, if he had been unable or unwilling to prepare for the hearing in six months, there was little likelihood that he would do so in any further adjournment.

On being told the hearing was to go ahead, the councillor was asked what support the tribunal could give to assist him with the proceedings but decided to leave. The tribunal decided to proceed in his absence on the basis that it was not satisfied, having heard him in person and taking into account that he was continuing to carry out some of his councillor related functions, that he was unable to present his own case and to remain at the hearing. The Case Tribunal took note of the fact that he had had an extensive period of time within which to prepare and to seek assistance and representation.

On appeal to the High Court (*Janik v Standards Board for England* - [2007] All ER (D) 335 (Mar)) it was held that the normal approach in cases where a litigant was seeking an adjournment on medical grounds was to allow such an adjournment, unless strong facts

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pointed to the contrary. In the circumstances, the tribunal had been entitled to refuse an adjournment and proceed in the claimant's absence.

[Decision](#)

# Procedural issues

## Determinations and sanctions

### Seriousness of breach

#### APE 0396

The chair at a planning committee meeting declared a personal interest but not a prejudicial interest, which he also had. The member voted at the meeting and used his casting vote as chair following an equality of votes to object to the planning application. The appeals tribunal upheld the standards committee finding that the use of the casting vote elevated the seriousness of the breach. This was taken into account when the sanction was imposed.

#### [Decision](#)

#### APE 0403

The appeals tribunal was of the view that whether or not advice is provided, it is the personal responsibility of a member to determine if they have a prejudicial interest and so whether they need to withdraw from a meeting. This means that even if a member relies on incorrect legal advice, it does not mean that a breach has not been committed. Any advice sought or given only affects the seriousness of the breach and therefore the sanction.

#### [Decision](#)

### Adequacy of reasons for decision

#### LGS/2010/0495

The tribunal upheld the standards committee's finding that the member failed to treat the parish clerk with respect and partly upheld the finding that the member, by her actions brought her office into disrepute. It varied the sanctions imposed by the Standards Committee.

The tribunal commented on the content of the Notice of Decision prepared by the standards committee stating it to be confusing and inadequate. The notice did not explain its findings of fact and conclude erroneously that certain facts were not in dispute. It did not adequately give its reasons for finding there had been a failure to comply with the Code or whether all or part of paragraph 5 was breached. Perhaps more importantly, some of the sanctions imposed by the Standards Committee were confusing and were beyond their powers.

#### [Decision](#)

### Powers to impose a sanction

#### APE 0464

In this case the local standards committee had imposed a sanction on the councillor concerned which included going on equalities training. However, as part of the sanction the

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committee also decided that the councillor would have to pay the first £250 of the cost of that training.

The tribunal considered regulation 19 of the Standards Committee (England) Regulations 2008 which deals with a standards committee's powers to impose sanctions following a finding of a breach of the Code. Regulation 19(3) lays down a list of sanctions and provides that the standards committee "shall impose any one of, or any combination of, the following sanctions." The tribunal took this wording to mean that only the sanctions laid out in regulation 19 are available and that it was therefore beyond the powers of the standards committee to require the member to pay towards the cost of the training.

## [Decision](#)

# Procedural issues

## Rules and procedures

### Delay

#### Dawkins v Bolsover District Council 2004, CO/3011/2004

**Note:** This case was dealt with under the rules and procedures applicable at the time and not under paragraph 18(1)(b) and (d) of the standards Committee (England) Regulations 2008. Nevertheless it is relevant in interpreting the words “as soon as reasonably practicable” in paragraph 18(1)(d).

The relevant regulations at the time contained a requirement to hold a hearing within the period of three months beginning on the date on which the monitoring officer first received a report from the ESO. The ESO produced a report which was received by the monitoring officer on 20 August.. That triggered the three month period which expired on 20 November. During this three month period slippage in deadlines for responses, training sessions for committee members as to new procedures under the regulations and a change in monitoring officer led to a meeting on 26 November which set the hearing date for 24 February the following year. However, the chairman of the committee was ill on that date and therefore the hearing was postponed until 6 April 2004. Following the hearing a decision was made on 20 April to suspend the claimant from office for a period of three months. The councillor concerned applied for judicial review.

The Court decided that the councillor’s application would be allowed. It concluded that in such cases substantial compliance would suffice to prevent a hearing from being a nullity. The principle purpose of the regulations was to preserve and enforce high standards in public life. It was in the public interest that allegations were resolved quickly. However, the time limit was a fixed, not flexible deadline. Unforeseen events, such as illness, could be enough to justify delay, however, ordinary operational reasons and foreseen obstacles would not.

In the circumstances of this case however there had not been substantial compliance with the three-month deadline. The fact that the reasons for delay might have been understandable was not enough to make them sufficient. Accordingly the decision of the standards committee was quashed.

#### APE 0367

**Note:** This case was dealt with under the rules and procedures applicable at the time and not under paragraph 18(1)(b) and (d) of the standards Committee (England) Regulations 2008. Nevertheless it is relevant in interpreting the words “as soon as reasonably practicable” in paragraph 18(1)(d).

The appeals tribunal considered, as a preliminary issue, whether the standards committee was able to consider the matter because of the lapse of time since it received the reference from the ethical standards officer (ESO). It took account of the judgement of Mr Justice

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Hughes in the case of *Dawkins v Bolsover District Council* 2004, CO/3011/2004 which considered this point in an application for judicial review.

The tribunal noted the requirement to hold a hearing within the period of three months beginning on the date on which the monitoring officer first received a report from the ESO. They considered whether there had been substantial compliance with the provisions of the regulations, in that there had been a “genuine and determined effort to hold the hearing within the three month period” (Mr Justice Hughes in the *Dawkins* case at paragraph 65).

The failure of the standards committee to hold a substantive hearing within the timetable laid was not for reasons which, in the tribunal’s view, were beyond the control of the council, or outside what could reasonably have been anticipated. The council’s own decision at a very late stage (after the expiry of the time limit) to increase the pool of standards committee members from whom panels might be selected bore this out. In addition there were some delays which were not adequately, if at all, explained in the papers before them. As a result the hearing which had taken place was unlawful and of no effect.

[Decision](#)

## APE 0378

The tribunal noted that Parliament had not provided any limitation period within which a complaint had to be made. Therefore, if an allegation relies on a series of events, it is appropriate for the tribunal to look at the individual event as part of that series when considering whether its age makes it unfair or detrimental to the subject member. In considering unfairness and the detrimental effect in this case, the Tribunal took into account:

- that all the events occurred within two years
- the allegations were supported by written evidence rather than personal recollections
- the events related to breaches of the same paragraph of the Code
- the member had not identified any detriment she had suffered as a result of the age of some of the events

There was therefore no unfairness or detriment in the allegations being dealt with.

[Decision](#)

## APE 0441

The tribunal stated that it is desirable that any investigations and consequential proceedings should be undertaken with the minimum of delay, particularly if any delay prejudices a party by the timing of a decision.

[Decision](#)

# Procedural issues

## Referral by a standards committee to the tribunal

### APE 0439

The matters in this case were the subject of an investigation by an ethical standards officer (ESO). The ESO referred the matter back to the monitoring officer of the relevant authority. Given the nature of the allegations involved and the status of the elected member involved, the authority's standards committee decided that the matter should be referred to the Adjudication Panel for England (as was then). This was because they concluded that the action which the committee could take would be insufficient if they found that there had been a breach of the Code.

Following submissions from the ESO's representative regarding the tribunal's jurisdiction to consider such a referral where the matters which were the subject of an investigation had been referred by the ESO to the monitoring officer, the tribunal decided that it did have jurisdiction to consider the matter and had power to apply sanctions, including disqualification.

### [Decision](#)

## Striking out a case

### LGS/2010/0509

The tribunal received a reference under Regulation 17 of the Standards Committee (England) Regulations 2008. It concerned the actions of a councillor towards and/or relating to a clerk to a parish council dating back over six years and involved nine complaints most of which had been considered by Standards for England (SfE) already. The council was directed, amongst other things, to clarify the allegations being pursued which did not involve matters that had already been considered by SfE. Only three allegations remained for consideration.

In the light of the fact that only three allegations remained for consideration, the council sought the consent of the tribunal to withdraw the reference given that the seriousness of the residual allegations (both cumulatively and individually) was such that the powers of sanction available to it in relation to these matters would be adequate were a breach to be found. The intention was that the matters would be referred back to the standards committee for reconsideration. The councillor opposed the request.

Because of this opposition the Presiding Judge directed that a hearing take place in order to consider three matters, namely:

- 1) Whether the Tribunal should give consent to the Applicant under Rule 17(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Tribunal Rules") to withdraw the reference;
- 2) If not, whether having regard to the evidence, it would be appropriate for the Tribunal to exercise its powers under Rule 8(3)(c) of the Tribunal Rules to strike out the whole or part of the Applicant's case on the ground that it has no reasonable prospect of success; and if not;

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### 3) What further directions should be made.

At the hearing, the council confirmed that it did not wish to pursue its request to withdraw the reference. This left the main issue to be considered at the hearing; whether the tribunal should exercise its power to strike out all or part of the remaining case. Having considered the evidence before them the tribunal conclude that it saw no reasonable prospect of the council succeeding in establishing a breach of the Code on the evidence relied upon. The Tribunal therefore struck out the entirety of the reference under Rule 8(3)(c) of the Tribunal Rules.

#### [Decision](#)