

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING CODE OF GOOD PRACTICE

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1. **The Need for a Code**

1.1 The Planning system involves taking decisions about the use and development of land in the wider public interest, having regard, in particular, to what is currently known as the Development Plan. In doing so such decisions have to balance the requirements of the individual, whether the applicant or a neighbour, against the broader public interest. It is fundamentally important that the planning system should not only be fair, but should be seen to be fair. Accordingly the Local Government Association has recommended that Planning Authorities should agree a local Code of Practice to guide Elected Members, Officers and developers in the way they go about the business of dealing with planning matters.

- ***The key purpose of Planning:*** to control development in the public interest.
- ***The aim of this Code of Good Practice:*** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- ***Your role as a Member of the Planning Authority:*** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- ***When the Code of Good Practice applies:*** this Code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with Officers or the public and consultative meetings and site visits). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

1.2 **If you have any doubts about the application of this Code to your own circumstances, you should seek advice early from the Monitoring Officer or Head of Committee Services (or one of their staff) and preferably well before any meeting takes place.**

2. **Relationship to the Members' Code of Conduct**

2.1 There is a relationship between the Members' Code of Conduct and this Code of Good Practice. In dealing with planning matters Members should have regard to both.

2.2 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with.

2.3 **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may:

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- *put the Council at risk of challenge on the legality or maladministration of the related decision; and*
- *put yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.*

3. **Role of Elected Members and Officers**

- 3.1 Elected Members and Officers have different, but complementary roles. Both serve the public, but Members are responsible to the electorate and are elected to represent not only their electoral division, but all people of the County. Officers are responsible to the Council as a whole: they advise the Council, Executive and their Committees and carry out the Council's work. They are employed by the Council, not by individual Members, and it follows that instructions are usually given to Officers through a Council, Executive or Committee decision, or through delegated powers. A successful relationship between Elected Members and Officers can only be based upon mutual trust and understanding of each others' positions. This relationship and the trust which underpins it must never be abused or compromised by either party.
- 3.2 Whilst Elected Members have a special duty to their constituents, including those who did not vote for them, their over-riding duty is to the whole community. The basis of the planning system is the consideration of individual proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Whilst Members should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 3.3 Elected Members determine planning applications and planning enforcement issues within the context of planning policy. To reduce the risk of planning decisions being legally challenged, Members must not only avoid impropriety, but must at all times avoid any occasion for any appearance of, or allegations of, improper conduct. When Elected Members come to make a decision on a planning matter, they must therefore:
- ***Act fairly and openly***
 - ***Approach*** each application with an open mind
 - ***Carefully*** weigh up all relevant planning issues
 - ***Determine*** each application on its planning merits
 - ***Avoid*** contact with interested parties which might be taken to indicate that they were unduly influenced by one party or another
 - ***Ensure*** that there are clear and substantial planning reasons for their decisions, and that those reasons are clearly stated.
- 3.4 The Officers' function is to advise and assist Members in matters of planning policy and in their determination of planning applications and enforcement issues by:-

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- **Providing** impartial and professional advice
- **Making sure** that all the information necessary for the decision to be taken is made available
- **Providing** a clear and accurate analysis of the planning issues
- **Setting** applications and enforcement issues against the broader Development Plan policies and all other material planning considerations
- **Giving** a clear recommendation
- **Carrying out** the decisions of Elected Members made at Committee meetings

3.5 In addition, the Royal Town Planning Institute (RTPI) Code of Professional Conduct (Appendix 1) also sets out clear guidelines for the conduct of Planning Officers. Through the Local Government and Housing Act 1989, restrictions are set on the outside activities of some senior staff, such as membership of political parties and serving on another Council.

3.6 The principles from the Report on Standards of Conduct in Local Government (1997) ('Nolan Report') are, **selflessness, integrity, objectivity, accountability, openness, honesty**, should guide all conduct of Members and Officers. In summary:

The actions and conduct of Members and Officers should be such as would seem appropriate and above suspicion to an impartial outside observer. Decisions should be taken in the interests of the County as a whole, and should not be improperly influenced by any person, company or group. The key is to demonstrate that each Council and Member's decision was taken on the facts alone, without any undue outside pressure.

4. **Decision Making and Planning Considerations**

4.1 It is essential that there is good decision making in planning matters. The way in which a decision is reached is very important.

4.2 The key rules for decision making were formulated in a court case involving Wednesbury Corporation, but they apply to decision making by public authorities. The rules are:-

- Take all relevant considerations into account before reaching a decision.
- Do not take irrelevant considerations into account.
- Any decision must not be manifestly unreasonable; i.e. outrageous in its defiance of logic or of accepted moral standards.

4.3 In cases such as planning where a decision on an application will affect the rights of individuals regard, must also be had to the "rules of natural justice" and the Human Rights Act 1998. This means:-

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- Let persons who may be affected by the decision know that their rights may be affected. They must have a reasonable opportunity to consider the matter.
 - Provide persons who may be affected with an opportunity to make representations.
 - Deal with the matter within a reasonable time.
 - Always provide reasons for decisions.
 - Justice must be seen to be done.
- 4.4 The Human Rights Act 1998 makes it unlawful for public authorities to act in a way which is incompatible with the rights included in the European Convention on Human Rights. The following rights are particularly relevant in the planning process: -
- Article 6: Right to a fair hearing
 - Article 8: Right to respect for private and family life
 - Article 1 of First Protocol: Protection of Personal Property
- 4.5 Planning decisions are based on planning considerations and cannot be based on immaterial considerations. The Town and Country Planning Act 1990, together with Government guidance and cases decided by the Courts, define what matters are material to planning decisions.
- 4.6 **It is the responsibility of Officers** in preparing reports and recommendations to Members, and in advising Committees, **to identify the material planning considerations and to warn Members about those matters which are immaterial to planning decisions.**
- 4.7 The starting point for decisions on planning applications is the Development Plan. The effect of Section 54A of the Town and Country Planning Act 1990 and Section 38 of the Planning and Compulsory Purchase Act 2004 is that planning decisions must be taken in accordance with the Development Plan, unless material considerations indicate otherwise.
- 4.8 Other material planning considerations include:-
- *Government guidance contained, for example, in Planning Policy Guidance notes (PPGs), Regional Planning Guidance, Circulars and Ministerial announcements;*
 - *statutory duties in relation to conservation areas and listed buildings;*
 - *representations made by statutory consultees and other people making comments, to the extent that they relate to planning matters.*
 - *whether a proposal would unacceptably affect the amenities of existing and proposed use of land which ought to be protected in the public interest*

4.9 There is much case law on what are, and are not material planning considerations. Planning considerations must relate to the **use and development of land**. For example, the following are **not** normally planning considerations and **should not be taken into account in planning decisions**:-

- *personal and financial considerations*
- *private property rights and boundary disputes*
- *covenants*
- *effects on property or land values*
- *developers' motives and timing of an application*
- *issues to do with morals*
- *competition between businesses*
- *loss of view from a house or private place*
- *public support or opposition, unless it is founded on valid planning matters*

4.10 Members need to be alert to the fact that if they discuss any non planning matters during their consideration of an application this may give rise to a perception that the Members believe it is a material consideration and are having regard to it.

5. **Declaration of Interests by Members at Committee**

5.1 The Members' Code of Conduct sets out requirements and guidance for Members on declaring **personal** and **prejudicial** interests and the consequences of having such interests. These must be followed scrupulously and Members should review their situation regularly. When doing so it must be borne in mind that the Members' Code of Conduct advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. The responsibility for this rests individually with each Member.

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Personal Interests

5.2 Under the Code of Conduct a Member has a **personal** interest in any matter under discussion if:-

5.2.1 the matter relates to an interest in respect of which the Member has given notice in the statutory Register of Members' Interests; or

5.2.2 a decision upon the matter might reasonably be regarded as affecting **to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area**, the well-being or financial position of themselves, a relative or a friend, or

- *any employment or business carried on by such persons*
- *any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;*
- *any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*
- *any body which the Member would be required to register in the statutory Register of Members' Interests, in which such persons hold a position of general control or management.*

5.3 Where an Elected Member considers that they have a **personal interest** in a matter, they must always declare the existence and nature of it, but he/she may still participate in the subsequent discussion and vote. This would not be the case if the personal interest was also a **prejudicial interest**.

Prejudicial Interests

5.4 The Members' Code of Conduct provides that a personal interest is also a **prejudicial** one if:-

the interest is one which a member of public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

5.5 If a Member decides that an interest in a matter is both personal and prejudicial, he/she should not participate in any discussion and should leave the room before the item is considered or as soon as it becomes apparent the matter is being considered, unless he/she has received a dispensation from the Standards Committee. It is for Members to interpret this using the guiding rule that one should not use one's position to further a private, or personal, interest, rather than the general public interest, or give grounds for such suspicion. Such private interests could arise through family, friends, clubs, secret societies, trade unions and voluntary bodies.

5.6 The responsibility for declaring an interest lies with the individual Member. However, the following are examples of when it is likely to be necessary for a Member to declare a personal and prejudicial interest in a planning matter:-

- ***close acquaintance, personal friendship, close working or family connections with an applicant, agent, objector or other person with an interest in a planning application or enforcement case;***
- ***regular business dealings with a person with an interest in a planning matter;***
- ***living, or running a business, in proximity to a particular site, such that you might be affected by the proposals under discussion;***
- ***personal enmity against a person or organisation with an interest in the planning proposal;***
- ***being a Member, representative or employee of an organisation which has applied for planning permission or is involved in a planning matter – unless the Member's involvement is no different from that of an ordinary member of the public (e.g. membership of a large national organisation like the Friends of the Earth, Greenpeace, or English Heritage);***
- ***when the Member has made his/her views known on the matter – (see Section 7);***
- ***the Member's spouse or partner has any of the above interests.***

5.7 The Code of Conduct also includes some exceptions to this. For example, if the matter under discussion relates to:-

- *another authority of which the Member is a member;*
- *another public authority in which the Member has a position of general management or control;*
- *a body to which the Member has been appointed or nominated as a representative of the Authority.*

Then, in these circumstances, the interest may not be regarded as prejudicial. In practice, therefore, the Member would need to declare a personal interest, but may still be able to participate. It is important to note that even where one of the exceptions is relevant, a Member must still consider whether there is a prejudicial interest and guidance from the Standards Board has indicated that in planning matters the exceptions are unlikely to apply.

5.8 It can be seen that these provisions of the Code of Conduct are an attempt to separate out interests arising from the personal and private interests of the Member and those arising from the Member's wider public life. The emphasis is on a consideration of the status of the interest in each case by the Member personally, and included in the judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts.

5.9 Translated to a Member's involvement in planning issues, the two stage tests of personal and prejudicial interests will require a Member to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the Member, his family, friends or employer.

5.10 **If you have a prejudicial interest**

If you have a prejudicial interest in a matter to be discussed, you must leave the room and not seek improperly to influence the decision. Faced with this situation, there are a number of things you can do instead and some additional things that you cannot do.

What you can do: -

- You can make written representations, providing you disclose the existence and nature of your interest and do not seek preferential consideration for your representations. Such written representations in a private capacity can be made to Officers involved, but not to individual Members;
- In the case of planning applications, you can use a professional representative to make an application on your behalf, avoiding any appearance of impropriety;
- If constituents from your area have views about a matter in which you have a prejudicial interest, you could arrange for another Member of the Authority to present those views. You should formally advise your constituents about your interest and inform them that the other Member will represent their views on the issue. When representing the views of your constituents, the other Member should make it clear to the Committee or Officers that he or she is acting in your place because you have a prejudicial interest in the matter.

What you cannot do: -

- You cannot be present in the public gallery or speak as a member of the public even during separate public discussion sessions;
- You should not make written representations to Members of the relevant Committee (you should submit them only to the relevant Officers);
- ***Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority;***
- ***Don't try to represent electoral division/local views, get another County Council Member (perhaps from a neighbouring electoral division) to do so instead;***
- ***Don't get involved in the processing of the application;***
- ***Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Member. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Members when other members of the public would not have the same opportunity to do so.***

5.11 A flow chart is attached at Appendix 2 setting out the questions you should ask yourself to determine whether you have an interest.

6. **Lobbying of Members**

6.1 Lobbying is a normal and perfectly proper part of the political process. Consequently it is quite common for applicants or other interested parties to wish to discuss a proposed development with Elected Members before a Planning Application is determined. However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality and integrity of a Member being called into question.

6.2 Members are under an obligation to determine matters on their merits. That means that if they wish to continue to be properly involved in the determination of a particular planning matter, they must not make up their minds before receiving and reading any officer's report and before hearing any debate on the matter, because new information might come to light.

6.3 Offering a particular view in public before a matter is determined should not preclude a Member from taking part in the Committee and the vote providing that Member is not expressing a decided view. However, in practical terms expressing a view may lead to a Member's impartiality being questioned.

6.4 In summary:-

- ***Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may prejudice your impartiality and therefore your ability to participate in the Committee's decision making to express a firm decided view to vote one way or another.*
- ***Do** remember that your overriding duty is to the whole community not just to the people in your electoral division and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.*
- ***Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Authority's rule on gifts and hospitality.*
- ***Do** copy or pass on any lobbying correspondence you receive to the Assistant Director or his nominee at the earliest opportunity.*
- ***Do** promptly refer to the Assistant Director or his nominee any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise.*

- ***Do** inform the Monitoring Officer or Head of Committee Services where you feel you have been exposed to undue lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate Officers to follow the matter up.*
- ***Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:*
 - *listening or reviewing viewpoints from residents or other interested parties*
 - *giving advice on planning procedures*
 - *making comments to residents, interested parties, other Members or appropriate Officers, provided they do not amount to pre-judging the issue and you make clear you are keeping an open mind*
 - *seeking information through appropriate channels or*
 - *being a medium for the expression of opinion or speaking at the meeting as a Electoral Division Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed your constituents' views, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.*

7. **Membership of Lobby Groups**

- 7.1 Members need to exercise care where they are involved in a lobbying group. A Member who is also a member of a lobby or campaign group will have to give particular regard to declarations of interest as well as issues of bias.
- 7.2 As a Member of the Planning and Regulatory Functions Committee your statements and activities should not create the impression that your views on a matter are fixed and that you will not fairly consider the evidence or arguments presented to you when you are making a decision.

Public confidence in the probity of decision making is paramount.

- 7.3 Examples of Lobby or Campaign Groups: -

- The Ramblers
- English Heritage
- National Trust
- Friends of the Earth
- No More Incinerator Group
- No Development in Green Belt Action Group

Personal interests arising from membership of lobby groups

7.4 Your membership of lobby and campaign groups should be included in the Register of Interests. The Code of Conduct requires you to declare a personal interest in any matter that is included in the Register.

- *Do declare membership of lobby or campaign groups in the Register of Interests;*
- *Do declare a personal interest at a meeting where an issue on which your lobby or campaign group comes up for discussion;*
- *You can participate in the discussion at the meeting and vote providing your interest is not prejudicial*

Prejudicial interests arising from membership of lobbying groups

7.5 If you have a prejudicial interest in an item arising, declare that interest and withdraw from the room for that item.

Direct impact on lobby group

7.6 If the matter to be discussed will have a direct impact on a lobby group you belong to you are likely to have a prejudicial interest, e.g. planning application submitted by your lobby group.

Indirect impact on lobby group

7.7 Matters which relate to anything a lobby group campaigns on or has expressed public opinion about have an indirect impact on the group. This may mean you have a personal or prejudicial interest in it.

7.8 To determine if you have a prejudicial interest you need to consider: -

- the nature of the matter to be discussed;
- the nature of your involvement with the group;
- the publicly expressed views of the lobby group;
- what you have said or done in relation to the particular issue.

You must weigh up all these factors and consider whether a reasonable member of the public who knows the relevant facts would think it likely that your judgment of the public interest would be prejudiced.

7.9 The more focused your group is on a particular issue, the more involved and active you have been and the more committed you appear to a particular outcome, the more likely it is that your interest will be prejudicial.

7.10 Examples:

- (i) A Member is an annual member of English Heritage. If English Heritage had expressed support for an application you would need to declare a personal interest. The interest would not be prejudicial unless other factors were involved.
- (ii) A Member is a spokesperson for No More Incinerators Group and is a member of the Planning Regulatory Functions Committee which is to consider an application for a new incinerator. The proper course of action would be for that Member to declare a personal and prejudicial interest and withdraw from the meeting for that item. The Member's participation could also be challenged on grounds of predetermination.

Predetermination

7.11 A Member should not reach a final conclusion on an issue before coming to take a decision on it. This does not mean you cannot form a view about a matter before a meeting, but you must be willing to consider all arguments presented at a meeting and be open to persuasion on the merits of a case.

7.12 Publicly stating that you are open to persuasion may not be sufficient to prove you are not predetermined. You must genuinely be open to persuasion and appear to be so. A statement such as "this application will only get approval over my dead body" or being actively involved in a campaign against an application would be a strong indication that a Member was not open to persuasion on the merits of the case.

7.13 In summary:-

- ***Don't*** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you are likely to have fettered your discretion and are likely to have a personal and prejudicial interest/predetermined view.
- ***Do*** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Council for the Protection of Rural England (CPRE), Ramblers Association or a local civic society. But (1) disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal and (2) consider carefully the tests for a prejudicial interest/bias.
- ***Don't*** lobby fellow Members regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

- ***Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group meetings should never dictate how Members should vote on a planning issue.*
- ***Do** listen to constituents' views, but if you express a firm decided view in support of your constituents, you will be likely to be regarded as having a predetermined view.*

7.14 See the flow chart at Appendix 3 for questions to ask yourself when declaring interests relating to lobbying groups.

8. **Dual Hatted Members** – considering a matter at more than one authority

8.1 The Code of Conduct does not prevent Members from considering the same issue at more than one tier of local government including speaking and voting in both tiers.

8.2 Many Members of the County Council are also Members of District and Parish or Town Councils or National Park Authorities. If an issue comes up for discussion at the Parish/District and then the County you should: -

- *At Parish/District level – make it clear that you will reconsider the matter at County level, taking into account all relevant evidence and representations at the County tier;*
- *At County level – declare a personal interest arising from your membership of the Parish/District Council which has already expressed a view on the matter and make it clear that the Parish/District view does not bind you and you are considering the matter afresh.*

8.3 The Member must be genuinely willing to listen to the later debate and weigh the considerations material to the later committee decision. If a Member does not have an open mind at the later committee and simply wishes to retain their original voting disposition they should not take part.

8.4 Members should not take part in items on the Planning and Regulatory Functions Committee when it decides an application from another authority on which you serve such as a District or Parish Council. In such circumstances a reasonable member of the public would think that your judgment is likely to be prejudiced.

9. **Pre Application and Pre Decision Discussions**

9.1 The Council encourages pre-application discussions by Planning Officers with potential applicants. These bring advantages to all parties; they can avoid applications being made which are clearly contrary to policy and so avoid unnecessary worries for those who could be affected; they can avoid abortive work for the Council and applicants by giving clear information about Local Plan policies etc, before proposals are designed; and so they can improve the quality of applications and development.

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9.2 However, discussions might be seen (especially by objectors) as part of a lobbying process. In order to avoid such problems, pre-application discussions should take place within clear guidelines. Although the term “pre-application” has been used, the same considerations apply to any discussions which take place before a decision is taken:

- ***It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.***
- ***Advice should be consistent and based upon the Development Plan and material planning considerations.***
- ***Officers taking part in such discussion should make it clear if they are the decision-taker. Where an Officer is the decision-taker (for delegated matters – see Section 14), they should not normally meet the applicant, agent or objectors to discuss a case without another Officer being present.***
- ***A written note should be made and filed of all potentially contentious meetings. Ideally at least one Officer should attend such meetings; it may be helpful for more than one person to attend. A follow-up letter is advisable at least when documentation/material has been left with the Council. A note should also be taken of similarly potentially contentious telephone discussions.***
- ***Whilst Members will not normally be involved in pre-application or pre-decision discussions, if a Member is present he/she must be accompanied by an Officer. The Member should be seen to be advised by the Planning Officer on the Development Plan and other material planning considerations, and the Officer should take a note of the meeting and file it appropriately.***

9.3 Applicants and potential applicants sometimes ask for advice on whether planning permission will be granted in particular circumstances. For clarity, and to avoid a future decision on a planning application being compromised:-

- *Officers should normally ask someone requesting advice on whether planning permission is likely to be granted to put the request in writing – so that it is clear on what proposal advice is being given.*
- *Written replies to such requests will contain a caveat that advice cannot bind a future decision of the Council on any subsequent application.*
- *Officers will be unable to say what their final recommendation is on a particular planning matter until all issues have been considered and the papers published for the relevant Committee.*

10. **Political Groups**

- 10.1 Members should not accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly, while they may accord appropriate weight to the views of other Members, whether expressed in the committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor that they are not prepared to state in open Committee. As a result, it is inappropriate for any party group to instruct its Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who voted contrary to the group's collective view.
- 10.2 It is accepted that Members could be "politically predisposed" to a particular view without being disqualified from considering a matter. This is a practical recognition of the role played by party politics in local government. If however a Member is actively involved in a campaign relevant to a planning decision this may lead to an appearance of a predetermined view which may warrant withdrawal from any discussion or decision on the issue.

11. **Officer Reports to Committee**

- 11.1 To ensure that Planning and Regulatory Functions Committee gives due consideration to the Development Plan and other material considerations, all Committee decisions on planning applications and enforcement cases will be taken only after the Committee has received a written Officer report.
- 11.2 Reports should be accurate and:
- *cover, among other things, the substance of objections and the views of people who have been consulted (but see Section 21 on racist comments);*
 - *include reference to relevant Local Development Framework Document Policies, Development Plan Policies and Local Plan Policies and their implications for the case, site or related history (where relevant) and any other material considerations;*
 - *should have a written recommendation of action; oral reporting (to update a written report) should be rare and be carefully minuted when it does occur;*
 - *should contain an appraisal of the planning considerations which clearly justifies the recommendation and broadly indicates the weight which can be given to any opposing considerations;*
 - *if the recommendation is contrary to the provisions of the Development Plan, clearly state the material considerations which justify this;*
 - *describe the purpose and content of any planning agreement or obligation proposed in association with a planning permission.*

12. **Committee Procedures**

- 12.1 Many decisions on planning applications are taken by the Council's Planning and Regulatory Functions Committee

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- 12.2 Reports are available to the public five clear working days before the Committee meeting. Paragraph 11.2 describes the content of reports. The application files, containing all comments, are also available at that stage. The public (including applicants and objectors) can attend Committee meetings.
- 12.3 Public speaking is allowed at Planning and Regulatory Functions Committee meetings in accordance with an agreed procedure and to ensure transparency of decision-making process. It is also important in the context of Human Rights legislation. A guidance leaflet has been prepared (Appendix 7) which sets out the process to be followed.
- 12.4 It is important that Members are present throughout the debate on an item in the Committee Room. If any Member has to leave the Committee Room for any reason, thereby missing any part of the proceedings, he/she should take no further part in the voting arrangements for the item(s) considered during their absence.
- 12.5 The Committee may agree or disagree with the report and recommendation (but see Sections 13 and 14 below). Having considered all the relevant planning considerations, the Committee may:-
- *grant planning permission, often with various planning conditions*
 - *refuse planning permission, with justified planning reasons (see Appendix 9);*
 - *defer the application for further consideration and/or site visit.*

In all cases the Committee's reason for the decision, be it approval, refusal or deferral should be clear and precise and it is helpful to any members of the public attending at the meeting if these can be summarised by the Chairman.

- 12.6 The procedures governing the conduct of meetings are set out in the various Procedure Rules contained in the Council's Constitution. However, the general public who attend these meetings will not usually be familiar with the Constitution and the Procedure Rules, nor this Code. It is therefore important that decisions are made on relevant grounds and that this is the impression left with those who attend. Responsibility for this rests primarily with the Chairman of the meeting, assisted where appropriate by Officers. To facilitate this:-
- ***a briefing for the Chairman and Vice-Chairman of the Committee and Group Spokesmen will be held after the Officer reports and recommendations have been published. The purposes of these briefings are to inform the Chair of the issues, to ensure that the rationale for the Officer recommendation is explained, and to identify any potentially problematic or controversial items;***
 - ***one or more chartered town planners will be present at all Committee meetings at which planning matters are considered;***
 - ***a Legal Officer and a member of Committee Services will also be present***

13 **Site Visits - The Decision to Conduct a Site Visit**

13.1 The decision to have a site visit may come about in a number of different ways. The Committee may decide to visit a site prior to agreeing a recommendation on an application or a request may come from a Member for an affected Electoral division. In some cases it will be the Planning Officer who is recommending the site visit. However, site visits can cause delay and add costs so should only be used where there are substantial benefits. Therefore:-

- **A site visit is likely to be necessary only if the scale or impact of a proposed development is difficult to understand from the plans and any supporting material including photographs taken by Officers, or if a proposal is particularly contentious. Settings and surroundings are also fundamental to the consideration of applications.**
- **The reasons for a site visit should be stated and should be relevant to material planning considerations and will be recorded in the Minutes of the meeting.**
- **All Members (and Substitute Members if they are to attend the meeting itself) of the Planning and Regulatory Functions Committee should make every effort to attend.**

13.2 A site visit is not a meeting to discuss the planning merits of the scheme or to make decisions.

13.3 **Who Should Attend Site Visits**

13.3.1 Ideally all Members (and Substitute Members if they are to attend the meeting itself) of the Planning and Regulatory Functions Committee should endeavour to attend.

13.3.2 One or more Planning Officers will attend and in addition there may be a need for other representatives from the Authority to attend such as Highways, Heritage or Conservation Officers.

13.3.3 No other parties will usually be invited to attend the site visit unless considered necessary by the Committee or the Planning Officers.

13.3.4 Prior to the site visit taking place, the agent or applicant will be notified of the proposed date and time, however they should not normally be in attendance unless there are legal or insurance requirements necessitating their attendance. If their attendance cannot be avoided it may be necessary to invite representatives from the objectors to ensure fairness, but both parties will be advised that they may not make representations to the Committee while on site (except in exceptional circumstances or at the discretion of the Chairman).

13.3.5 In cases involving operational sites confirmation will be sought that the applicant has appropriate third party insurance liability cover for all parties attending the site visit.

13.4 **The Site Visit**

13.4.1 The site visit will be conducted in a formal manner:-

- (i) The Chairman will open the meeting and explain the purpose and conduct of the meeting. If other persons are present such as the applicant, public or objectors there will be a need to outline the procedure which is to be followed during the meeting.
- (ii) The Planning Officers will highlight the issues relevant to the site inspection and other material planning considerations. The Planning Officers will draw attention to the main site features which the Members need to note.
- (iii) Any other Officers present such as the Highways Officer will then have the opportunity to highlight any issues, which are relevant to the consideration of the matter and again they can point out relevant features on site which can be observed.
- (iv) Members can also point out features which can be observed or ask questions of the Officers.
- (v) While on the site visit Members should keep together as a group at all times. If other parties are present the Members of the Committee should avoid being spoken to individually by any persons present and should endeavour to see and hear everything on site as a group.
- (vi) The public, applicant and objectors will not normally be invited to the site visit, however, it may be that they attend the meeting. They will not normally be allowed to participate except in exceptional circumstances or if an actual point is to be clarified.
- (vii) To avoid giving an impression of being lobbied, Members should not listen or talk to anyone on site, unless in exceptional circumstances where they are being addressed as a group in accordance with arrangements agreed beforehand. Any comments should be made to the whole Committee through the Chairman.
- (viii) Whilst on site the Members should confine any remarks they make to matters of fact and avoid expressing any views or opinions which suggest that they have pre-judged the application.

- (ix) No discussion about the merits of the application or decision making will take place on site.
- (x) No hospitality will be accepted on site visits because of the impression this may create.

13.5 Exceptional Circumstances

- 13.5.1 In most cases site visits will be able to be conducted without the presence of the applicant, public and objectors.
- 13.5.2 If there is a situation where the site cannot be viewed without the attendance of the applicant then consideration must be given to whether objectors and members of the public should also be able to attend. Where the applicant has to attend then in the interests of fairness a representative of the objectors should also be able to attend. The applicant and objectors would be attending as observers only. They should not participate or make representations. If however, there are insurance reasons prohibiting the attendance of the public or objectors, then clear advice should be given to the applicant that there can be no representations made to the Committee whilst on site and any which are made will be ignored.
- 13.5.3 In cases where there are considerable numbers of objectors to an application or the application site is a significant distance from County Hall consideration will need to be given to whether representations may be heard on site from parties who have indicated they would not be able to attend a meeting at County Hall; whether the meeting of the Committee to determine the application can be held at a local venue or whether it would be appropriate to have a meeting arranged following the site visit at which representations could be heard from any parties who would not be able to attend the Committee meeting at County Hall.
- 13.5.4 In a case where the application will be considered by the Committee at County Hall, but a number of parties have indicated they are unable to attend that meeting, arrangements could be made to hear representations from those parties on the site visit or at a meeting following the site visit which would be held at a local venue. If representations are to be heard at the site visit or a subsequent meeting, arrangements should be made for this beforehand and all parties should be advised.
- 13.5.5 It will be made clear that the Committee will only hear representations from parties who would not be able to attend the meeting of the Committee to consider the application.

13.5.6 Anyone making representations will be allowed the same amount of time to speak as those who made their representations to the Committee at County Hall.

13.6 **Non attendance at the site visit**

13.6.1 If a Member is unable to attend the site visit they will need to consider whether they can take part in the discussion and decision making on that item.

13.6.2 Just because a Member has been unable to attend a site visit does not debar that Member from taking part in the decision making, but the purpose of a site visit is to understand the proposals and impact of development on site because it is felt that plans and photographs may not be sufficient.

14. **Decisions Delegated to Officers**

14.1 The Council has agreed that decisions on planning applications can be taken by Officers where there are no objections or it has not been requested by a Member that it be dealt with by the Committee. The system allows quicker decisions to be taken on straightforward matters.

14.2 New national Best Value Targets require that 90% of applications should be delegated to Officers, allowing Members to get involved in contentious issues whilst allowing speedy progression of more straightforward matters.

Decisions by Planning Officers are taken in line with Development Plan policies set by Members.

15. **Decisions Contrary to the Development Plan**

15.1 Planning decisions must normally be taken in accordance with the Development Plan.

15.2 If Officers are recommending granting planning permission contrary to the Development Plan:-

- *The decision will always be taken by the Planning and Regulatory Functions Committee, and not taken as a delegated decision.*
- *The Officers' report to the Committee must clearly identify the material planning considerations and how they justify overriding the Development Plan.*
- *The application will have been advertised by a site notice, and a local newspaper advertisement, in accordance with the Town and Country Planning (General Development Procedure) Order 1995 Article 8.*

15.3 If the decision would be a significant departure from the Development Plan, the application will be referred – normally after the Planning and Regulatory Functions Committee has agreed a recommendation – to the Office of the Deputy Prime Minister, to enable him/her to decide whether to “call in” the application to be decided centrally.

16. **Decisions Contrary to Officer Advice**

16.1 If the Committee makes a decision contrary to the Officers’ recommendation on a planning application or enforcement case then:

- *the proposer of the motion to go against the Officers’ recommendation, or the Chairman of the meeting, should state the planning reasons for the proposed decision before a vote is taken;*
- *the courts have said that the reasons should be clear and convincing, and be material planning considerations;*
- *the Planning and Legal Officers present at the meeting should be given the opportunity to comment upon whether the proposed reasons for the decision are planning considerations and if an approval is proposed, to recommend appropriate planning conditions;*
- *in the case of non-standard conditions being considered, these should be drafted by Officers and confirmed with the Chairman and Vice-Chairman of the Committee prior to the issuing of a decision notice;*
- *if the decision would be contrary to the Development Plan, then the Officer(s) should comment on the extent to which the other planning considerations could be seen to override the Development Plan and on whether the decision would be a significant departure from the plan requiring reference to the Secretary of State (see Section 15 above).*
- *a detailed minute of the Committee’s reasons should be taken and a copy placed on the application file;*
- *if the decision is contrary to the Development Plan, the minute should clearly set out those planning considerations which override the Development Plan.*

16.2 If the Committee wishes to amend or add conditions to an approval, Officers should be delegated the task of drafting the detailed wording of the conditions in line with the Committee’s wishes. Under the terms of Regulations currently in force, reasons for approval and refusal and reasons supporting conditions need to clearly refer to the relevant Policy. In any cases of uncertainty, Officers will consult with the Chairman of the Committee, before issue of the final decision notice.

16.3 Members should also be aware that in an appeal it might be necessary to call Members to give evidence about their decision where the Officers recommendation is not followed.

17. **Development Proposals Submitted by, or affecting Members and Officers**

17.1 Proposals to their own authority by serving and former Members and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. Proposals can take the form of either planning applications or Development Plan proposals, or may involve planning enforcement. It is perfectly legitimate for such proposals to be submitted, however, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.

- *Serving Members and Officers within the above criteria who submit their own proposal to the authority should play no part in the decision-making process for that proposal;*
- *Such proposals will be reported to Committee and not dealt with by Officers under delegated powers;*
- *The Council's Monitoring Officer should be informed of such proposals by serving Members and the Officers' report to the Committee will show that the applicant is a Member;*
- *Members and Officers should never act as agents for people pursuing a planning matter with their own authority.*

17.2 For proposals submitted by relatives and friends of Officers or Members involved with the development control process:

- *The Member or Officer concerned should have no involvement with the application.*
- *The Member or Officer concerned should alert the Assistant Director or his nominee to the proposal, in writing.*

17.3 Where a planning proposal directly affects the property or personal interests of a Member she/he should play no part in the decision-making process. This would apply, for example, if a Member submitted comments, as a neighbour, on a planning application.

17.4 Similarly, an Officer should have no involvement in processing a planning proposal which directly affects her/his property or personal interests.

18. **The Council's Own Developments**

18.1 Proposals for the Council's own development have to be treated in the same way as those by private developers.

- *All applications for the Council's own development on which there have been third party objections will be reported to Committee and not dealt with by Officers under delegated powers.*
- *All applications for the Council's own development will be the subject of a written Officer report, as with other applications.*

19. **The Media**

19.1 The principles of this Code of Good Practice also apply to press contact. Members and Officers when commenting to the media on planning matters should:-

- *have regard to the points made in the section on Lobbying (Section 7);*
- *ensure that they do not give the impression that they have pre-judged the planning application;*
- *make clear that Members will retain an open mind until such time as the full facts are available and these are debated by the appropriate Committee;*
- *for delegated applications, make clear that the Assistant Director/Planning Manager will retain an open mind until such time as the full facts are available and presented for decision.*

19.2 The Council's Communication Unit should be the initial contact for all press enquiries.

19.3 Any Officers can provide facts about a planning matter, which are in the public domain, to the media. However, the media should be referred to the Communications Unit in most cases and regard should be had to the protocol on Official Press Releases (copy contained in the Constitution).

20. **Hospitality**

20.1 Members and Officers are advised to treat with extreme caution any offer or gift, favour or hospitality which is made to them personally. The general presumption should be that hospitality is declined politely but firmly. Where to do so would cause offence and the hospitality involved is minimal, it should be recorded as soon as practically possible in the relevant Register of Gifts and Hospitality maintained by the Monitoring Officer.

20.2 Members are also obliged, under the Members' Code of Conduct to register any gifts or hospitality received over the value of £25 within 28 days of receipt. The supporting Protocol for Members' Guidance (contained in the Constitution) also advises that Members register sequential gifts/hospitality which cumulatively (but not individually) reach a threshold of £25 per quarter.

20.3 The high standard of conduct and impartiality expected of Officers is contained in the Council's Officer Code of Conduct.

21. **Racist Comments**

21.1 The Council will follow the procedures in the RTPI note "Planning Authorities and Racist Representations". In particular:

- *letters containing racist comments will be returned to the writer*
- *racist comments will not be referred to in reports to Committees*

- *persistent communications containing racist comments will be referred to the Commission for Racial Equality or the Police.*

This is to ensure that the Council abides by Sections 31 and 33 of the Race Relations Act 1976.

- 21.2 Decisions on whether comments are racist will normally be taken by the Assistant Director. The RTPI note provides further guidance.
- 21.3 Any applicants suggesting that they have been affected by racial abuse in whatever form, will have their application considered by the Planning and Regulatory Functions Committee and the Monitoring Officer will be advised on the circumstances and representations received.

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CODE OF PROFESSIONAL CONDUCT



The Royal Town Planning Institute

CODE OF PROFESSIONAL CONDUCT

as last amended by the Council on 17 January 2001

The Chartered Object of the Royal Town Planning Institute is to advance the science and art of town planning for the benefit of the public. It is the purpose of this Code to ensure that in all their professional activities members of the Royal Town Planning Institute:

- (a) shall act with competence, honesty and integrity;
- (b) shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;
- (c) shall discharge their duty to their employers, clients, colleagues and others with due care and diligence in accordance with the provisions of this Code;
- (d) shall not discriminate on the grounds of race, sex, sexual orientation, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity;
- (e) shall not bring the profession or the Royal Town Planning Institute into disrepute.

To this end the Council has drawn up the undermentioned numbered clauses which spell out in more detail the requirements of this Code. These requirements shall apply notwithstanding any permission or agreement to the contrary by or with the client or body employing or consulting any member.

In this Code the word 'member' means every corporate member, non-corporate member, honorary member and student of the Institute. Words importing the singular number include the plural and vice versa.

RTPI Code of Professional Conduct

- 1 (a) Members shall take all reasonable steps to maintain their professional competence throughout their working lives and shall comply with the Council's continuing professional development regulations as amended from time to time.

(b) Members who, as employers or managers, have responsibility for other members shall take all reasonable steps to encourage and support such other members in the maintenance of professional competence and in compliance with the Council's continuing professional development regulations.
- 2 In all their professional activities members shall not discriminate on the grounds of race, sex, sexual orientation, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity.
- 3 Members shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions and shall not knowingly enter into any contract or agreement which requires them to do so.
- 4 Members must take steps to ensure that their private, personal, political and financial interests do not conflict with their professional duties. They must take all reasonable precautions to ensure that no conflict of duty arises between the interests of one employer or client and another, or between the interests of any employer or client and the interests of themselves or their firms or business associates. They must disclose to their employer or clients, as appropriate, any such conflict, whether involving pecuniary or non-pecuniary interests. For the avoidance of doubt, 'private and personal interests' include those of a member's immediate family and friends, as well as those arising through membership of or association with clubs, societies and other organisations.
- 5 Members shall not disclose or use to the advantage of themselves, their employers or clients information acquired in confidence in the course of their work.
- 6 Members shall disclose to their employers or clients any discounts, gifts or commissions received from any third parties in connection with their work as professional planners.
- 7 (a) Before commencing work on any commission members shall ensure that their terms of engagement have been given and confirmed in writing to their clients and shall satisfy themselves that these terms have been accepted.

(b) Members shall notify their clients in writing before undertaking work or incurring fees or expenses additional to those previously agreed and shall satisfy themselves that the necessary instructions have been received.
- 8 When accepting instructions from private individuals members shall ensure that the services offered are appropriate to the individual's requirements.
- 9 Members shall be insured against claims for breach of professional duty as town planners in accordance with the regulations appended to this Code.
- 10 Members shall provide the Institute with particulars of their practice, employment and business in accordance with the regulations appended to this Code.
- 11 The Council may from time to time publish supplementary regulations relating to such matters as continuing professional development, planning aid, professional indemnity insurance, professional designations or direct professional access to the Bar, and members shall comply with any such regulations.

RTPI Code of Professional Conduct

- 12 Members with responsibility for the work of a company or of a practice or partnership or of a local planning authority or of any central government department or agency or of any other organisation or body any of which is engaged in town planning work, or for the work of any department, section or team within any such organisation or body, shall take all reasonable steps to ensure that all town planning matters in the organisation or body, or within that part of the organisation or body for which they have responsibility, are conducted in accordance with this Code, whoever undertakes such work.
- 13 Members practising outside the United Kingdom and Ireland shall order their professional conduct in such a way as to uphold the status and integrity of the Royal Town Planning Institute and the profession of town planning.
- 14 (a) It is the duty of every member, subject to any restrictions imposed by law or the courts, to report to the Institute any alleged breach of this Code of which he or she becomes aware and to assist the Institute in its investigations.
- (b) It is the duty of every member who is the subject of investigation by the Institute to assist the Institute in its investigations.
- 15 The Council has power to discipline any member who
- (a) in the opinion of the Council contravenes any of the provisions of the Code of Professional Conduct, including the supplementary regulations referred to in Annex A to the Code, or of the Royal Charter and Byelaws; or who
- (b) is convicted by a court of a criminal offence which in the opinion of the Council results in a breach of the provisions of Byelaw 7(2); or who
- (c) in the opinion of the Council is guilty of gross professional misconduct or incompetence or of such conduct as to render him or her unfit to continue to be a member of the Institute.
- 16 Disciplinary action will be taken only when the Council believes that the member is personally responsible for the conduct or action in question.
- Annexes*
- A Supplementary regulations
B Relevant Byelaws
C Disciplinary action

ANNEX A: SUPPLEMENTARY REGULATIONS

Paragraph 11 of the Code refers to supplementary regulations. These are as follows.

A1 Continuing Professional Development

Every corporate member, Legal Associate, Technical Member and academically qualified Student shall, subject only to the exercise of the Council's discretion in exceptional cases:

- (a) at least once a year prepare a professional development plan for the next two years identifying his or her personal professional development needs;
- (b) in any two year period undertake a minimum of 50 hours CPD activity related to the undertaking or managing of town planning;
- (c) maintain a written record of his or her CPD activity;
- (d) submit to the Institute on request and in such form as may be prescribed by the Institute:
 - (i) a copy of his or her professional development plan or plans covering the previous two years;
 - (ii) a written record of his or her CPD activity over the same period of two years, with an assessment of the value to him or her of each activity recorded and an explanation of the relationship between the CPD undertaken and the professional development plan or plans covering the period in question, taking into account any revisions to the plan made during the two year period;
 - (iii) a copy of his or her current professional development plan, if not already submitted under (i) above.
 - (iv) where appropriate, an explanation of his or her reasons for not having complied with any part of this regulation.

Notes to Regulation A1

(i) CPD, or continuing professional development, is defined by the Institute as: 'The systematic maintenance, improvement and broadening of knowledge and skill and the development of personal qualities necessary for the execution of professional and technical duties throughout the practitioner's working life.' Work experience is not in itself CPD, although action-based learning undertaken on a structured basis to fulfil objectives identified in a member's professional development plan would generally be accepted as CPD.

(ii) The Institute's Professional Conduct Advice Note 1 gives further information and advice on how to comply with the CPD regulations, including the prescribed form for the submission of professional development plans and written records of CPD activity.

(iii) 'Academically qualified' means having successfully completed a course of initial professional education accredited by the Institute.

(iv) 'Student' means someone registered as being a Student of the Royal Town Planning Institute. It is not synonymous with a 'student' on an academic course.

(v) Corporate members who have retired from practice but who have *not* transferred to Retired Membership, and who are therefore still corporate members, remain subject to the CPD requirements of the Code.

A2 Planning aid

A Code of Practice for Planning Aid Volunteers is published as annex A in 'The Management and Operation of RTPI Planning Aid Services', a copy of which should be held by every member involved in the provision of planning aid services.

RTPI Code of Professional Conduct

A3 Direct Professional Access to Barristers

The Council has published guidance notes to assist Chartered Town Planners in the use of Direct Access to Barristers in England and Wales. As the title suggests, these are guidance notes rather than regulations. However, members' attention is drawn to paragraph 7.1, which points out that instructing members are personally liable for payment of barristers' fees and says: 'Failure by an instructing member to pay a barrister's fee would normally amount to professional misconduct and could result in disciplinary action being taken against the member under the Institute's Code of Professional Conduct.'

A4 Advertising

(a) All advertising must be legal, decent, honest and truthful and must avoid exaggeration and flamboyant language.

(b) Members must not make derogatory comparisons with the services available from other members and must not misrepresent the services available from their own practices.

(c) When canvassing instructions from private individuals members must:

(i) indicate that the individual's existing professional adviser (if any) should be consulted;

(ii) not canvass repeatedly or importunately nor continue canvassing instructions from individuals who have clearly stated that they do not require the services offered.

A5 Use of the RTPI logo

Members, Fellows, Legal Members, Legal Associate Members, Legal Associates and practices entitled to be described as 'Chartered Town Planners' may use the Institute's logo on letterheadings and advertising and promotional material in accordance with the following provisions.

(a) Whenever so used by individual members the logo must be accompanied by the words 'Chartered Town Planner', 'Legal Member of the

RTPI', 'Legal Associate Member of the RTPI' or 'Legal Associate of the RTPI' (or '... of the Royal Town Planning Institute') as the case may be.

(b) Whenever so used by practices entitled to be described as 'Chartered Town Planners' the logo must be accompanied by the words 'Chartered Town Planners'.

(c) Whenever so used by individual members who are partners or directors of a practice not entitled to be described as 'Chartered Town Planners' the logo and the accompanying words as prescribed in paragraph (a) above must clearly refer to the named individual member or members and not to the practice.

(d) The logo should not be used in such a way as to suggest that the member, members or practice are acting on behalf of the Institute and the words 'Royal Town Planning Institute' should be used (if at all) only in accordance with the provisions of this regulation.

(e) The logo may not be used by any member, practice or other organisation except in accordance with this paragraph.

A6 Provision of information to the Institute

Every member shall within 28 days of being required to do so furnish to the Institute such particulars in such form as the Council shall reasonably require:

(a) of his or her firm, if he or she is carrying on professional practice as a sole principal, partner, director or consultant to a firm; and

(b) of his or her employment, if he or she is employed under a contract of service or a contract for services.

Where a member has furnished particulars in accordance with this regulation and where any change occurs in the circumstances notified in those particulars he or she shall furnish full particulars thereof to the Institute no later than 14 days after such change has come into effect.

A7 Compulsory Professional Insurance Regulations

1: Definitions

For the purpose of these CPII Regulations unless the context otherwise requires:

'Member' means

(a) any member of any class of membership of the Institute (including all corporate and non-corporate members and Students) who is or who is held out to the public to be practising as a town planner and who is

- (i) a sole principal of or
- (ii) a partner in or
- (iii) a director of or
- (iv) a consultant to

a firm offering town planning services to the public;

(b) any member of any class of membership of the Institute (including all corporate and non-corporate members, Retired Members and Students) who has or was held out to the public to have practised as a town planner in any of those capacities and has within a period of six years ceased to do so;

'Sole principal' includes a Member who carries on practice as a principal in addition to other employment;

'Consultant' includes any Member, whether or not expressly described as a consultant, who is employed in any firm offering town planning services to the public in which no partner or director is a Member and whose name appears on that firm's business stationery or in business communications or material of any nature;

'Firm' includes a sole principal, partnership, body corporate or company incorporated with either limited or unlimited liability;

'Held out to the public' means described on

business stationery or in business communications or material of any nature by words which include 'sole principal', 'partner', 'director' or 'consultant' or otherwise represented to the public as being a sole principal, partner or director of or consultant to a firm. For the avoidance of doubt 'the public' in the context of these CPII Regulations includes professional, corporate and institutional clients;

'Town planning services' covers all work which town planners hold themselves out as being professionally qualified to undertake and includes but is not necessarily limited to:

- development planning and development control services;
- site appraisals and development feasibility studies;
- development and design briefs;
- environmental impact assessments;
- master plans and urban design studies;
- policy research;
- government development and urban regeneration strategies;
- coastal planning and waterside development;
- conservation of the historic environment;
- contaminated and derelict land;
- economic development;
- minerals planning and the management of waste;
- major housing schemes and new settlements;
- planning for retail, commercial, industrial, healthcare, tourism and leisure uses;
- re-use of surplus land;
- rural planning;
- transportation planning;
- urban regeneration;
- legal advice and services relating to town planning law and procedures

but excludes teaching and lecturing.

'RTPI Approved Policy' means the policy wording as last approved by the Council;

RTPI Code of Professional Conduct

'Gross income' for the purposes of these CPII Regulations means all professional fees, remuneration, commission and income of any sort whatsoever in so far as these have been derived from work undertaken or performed in the United Kingdom (including the Channel Islands and the Isle of Man) and/or within the Republic of Ireland but excluding any sums received for the reimbursement of disbursements, any amounts charged by way of Value Added Tax and any income from judicial or other such offices as the Council may from time to time determine.;

'Preceding year' means the Member's accounting year which ended during the 12 months before the date on which any insurance policy under these CPII Regulations is taken out;

'Uninsured excess' means the amount of any claim which a Member or his or her firm may be required to pay before any indemnity is granted under the terms of any policy of insurance required under these CPII Regulations;

'Assigned Risks Pool' means an arrangement approved by the Council and established by the Institute to provide a temporary insurance facility for Members who are unable to comply with the Institute's Compulsory Professional Indemnity Regulations because they have been declined or constructively declined insurance but who satisfy the relevant rules of admission;

'ARP Panel' means the panel approved by the Council of the Institute to administer the Assigned Risks Pool on such terms as the Council shall from time to time determine;

'Listed Insurer' means an insurer who:

(a) is authorised by the Department of Trade and Industry in the United Kingdom or the Department for Enterprise and Employment in the Republic of Ireland to underwrite general liability insurance business or is in some other way recognised by the Department of Trade and Industry or the

Department for Enterprise and Employment to provide professional indemnity insurance business in the United Kingdom or in the Republic of Ireland respectively; and

(b) is rated within Standard & Poors 'secure range' (in at least Category BBB); and

(c) agrees to write a policy that is no less comprehensive than the form of the RTPI Approved Policy in force at the time when the policy of insurance is taken out; and

(d) agrees to underwrite for the period of the contract the ARP lineslip contract on terms set out in the Prospectus for Listed Insurers and to be bound by the terms thereof; and

(e) is listed by the RTPI for the purposes of the Assigned Risks Pool.

2: Scope of cover required

(a) Members shall insure by means of a policy no less comprehensive than the form of the RTPI Approved Policy in force at the time when the policy of insurance is taken out.

(b) Subject to sub-paragraph (c) of this Regulation every Member shall ensure that he or she and any firm offering town planning services to the public of which he or she is a principal, partner or director shall be insured against claims arising from work undertaken or performed within the United Kingdom (including the Channel Islands and the Isle of Man) and/or within the Republic of Ireland and that each partner or director of or consultant to such firm shall also be insured.

(c) If a Member who is practising solely as a consultant to a firm offering town planning services to the public can show

(i) that the firm to which he or she is a consultant covers the Member under its policy of insurance; and

RTPI Code of Professional Conduct

(ii) that the firm names the Member as the insured or one of the insured on the policy of insurance; and

(iii) that such policy of insurance gives no less cover to the Member than that required by these CPII Regulations

then that Member shall not be under an obligation to carry any separate insurance cover over and above that carried by the firm concerned.

3: Minimum limits of indemnity

Subject to regulation 4 the minimum amount of cover required under these CPII Regulations shall be:

- (a) £100,000 for each and every claim where the gross income of the firm in the preceding year did not exceed £40,000; or
- (b) for each and every claim two and a half times the gross income of the firm in the preceding year where that income exceeded £40,000 but did not exceed £200,000; or
- (c) £500,000 for each and every claim where the gross income of the firm in the preceding year exceeded £200,000.

4: Uninsured excess

The uninsured excess under any policy of insurance shall not exceed:

- (a) in the case of a policy with a limit of indemnity of up to and including £250,000 a maximum sum of £7,500 each and every claim; or
- (b) in the case of a policy with a limit of indemnity of more than £250,000 a maximum of 2.5% of the sum insured or £10,000 each and every claim, whichever shall be the greater.

5: Run-off cover

(a) (i) Every Member who is a partner, director or sole principal of a firm offering town planning services to the public shall ensure that any former partner, director or consultant continues to be insured on an each and every claim basis against any claim arising from work previously undertaken by such former partner, director or consultant within any of the territories referred to in sub-paragraph (b) of Regulation 2 above for a period of six years from the date when such individual ceased to be a partner, director or consultant.

(ii) In the event that a firm is amalgamated, merged, dissolved or wound up or otherwise ceases to trade, as the case may be, each former sole principal, partner, director and consultant shall ensure during the six-year period following such amalgamation, merger, dissolution or winding up that insurance cover that complies in all respects with the requirements set out in these CPII Regulations is maintained.

(b) Subject to sub-paragraph (c) every Member who has formerly practised as a sole principal and has ceased to do so shall for a period of six years maintain insurance cover on an each and every claim basis in accordance with the minimum limits of indemnity set out in Regulation 3 in respect of his or her previous practice.

(b) Notwithstanding Regulation 3 and sub-paragraph (b) of this Regulation a sole principal who has ceased to practise may take out a policy that provides a minimum limit of indemnity cover of £250,000 for any one claim and in all provided that the average annual gross income of the firm over the three years preceding cessation of practice did not exceed £50,000.

6: Assigned Risks Pool and Listed Insurers

RTPI Code of Professional Conduct

- (a) Every Member shall in respect of all policies renewed on or after 1 January 2001 insure with an insurer who is a Listed Insurer as agreed from time to time by the Council and whose name has been entered on a list issued by the Council and available for inspection by Members on request.
- (b) Nothing in Regulation 6(a) shall conflict with the requirements of the EU rules applicable to public authorities and utilities when acquiring goods, works or services.
- (c) Notwithstanding the requirements of Regulations 2, 3 and 4 Members who are insured through the Assigned Risks Pool may take out a policy in the form prescribed by the Council that:
 - (i) is less comprehensive than the form of the RTPI Approved Policy in force at the time of admission to the Assigned Risks Pool; and
 - (ii) provides a minimum limit of indemnity according to gross income as set out in Regulation 3 except that it is in the aggregate rather than on an each and every claim basis; and
 - (iii) provides a maximum uninsured excess as determined by the ARP.
- (d) The ARP Panel will perform such advisory, monitoring and other functions (including that specified in paragraph (iii) above) in relation to the Assigned Risks Pool as the Council shall from time to time determine.

signed by the Member or on the Member's behalf confirming details of the Member's current indemnity insurance policy; or

(ii) within 28 days of being required by the Institute to do so, such evidence and in such form as the Council shall from time to time prescribe either that the Member is not subject to these CPII Regulations or that the Member has complied with them.

- (b) Any Member who ceases to have indemnity insurance as specified in these CPII Regulations shall notify the Institute immediately.
- (c) Any sole principal, partner or director of or consultant to a firm offering services to the public who wishes to establish his or her exclusion from the effect of these Regulations on the grounds that the services offered by the firm are not town planning services must seek written confirmation of such exclusion from the Institute.

8: Exclusion of liability

No Member shall be insured under a policy of indemnity insurance which contains an exclusion of liability for claims arising from the Member's previous practice activity unless:

- (a) it is limited to claims arising as a result of work undertaken more than six years previously; or
- (b) the same liability is covered by a separate policy of indemnity insurance.

7: Monitoring and return of certificates

- (a) Every Member shall provide to the Institute:
 - (i) within 28 days of effecting indemnity insurance, a certificate in such form as the Council shall from time to time prescribe

9: Territorial application

Although these CPII Regulations do not require Members to insure in respect of work which is undertaken outside the United Kingdom and/or the Republic of Ireland the Council advises Members to obtain the best available cover for all work that they undertake wherever it is undertaken and expects them to abide by the spirit of the Regulations in so far as they are compatible with the laws of the countries in which they undertake work.

10: Power of waiver

The Council shall have power to waive in writing in a particular case any of the provisions of these Regulations.

The Council shall have power to delegate any or all of its powers under these Regulations to a committee of members of the Institute appointed for the purpose.

12: Effective date

These Regulations shall come into force on 1 January 2001.

ANNEX B: RELEVANT BYELAWS

(as last amended 4 January 2000)

The Byelaws of the Chartered Institute include the following provisions relating to matters of professional conduct and discipline.

7(1) Code of Professional Conduct. The Council shall have the power to prescribe and publish a Code of Professional Conduct and thereafter from time to time to revise, amend, add to or rescind such Code or any part or parts thereof.

7(2) Conduct of members. Every corporate and other member shall observe the provisions of the Royal Charter and these Byelaws and shall conduct himself or herself in such a manner as shall not prejudice his or her professional status or the reputation of the Chartered Institute and without prejudice to the generality of the foregoing shall, in particular, comply at all times with any Code of Professional Conduct prescribed and published by the Council under the provisions of the last preceding paragraph of this Byelaw.

7(3) Disciplinary action.

(a) In respect of any member who in the opinion of the Council fails to comply with any Code of Professional Conduct prescribed and published as aforesaid or who otherwise contravenes the provisions of the Royal Charter or these Byelaws the Council shall have the power to:

- (i) warn the member as to his or her future conduct; or
- (ii) reprimand the member; or
- (iii) suspend the member from membership of the Chartered Institute for such period as the Council as determine; or
- (iv) terminate the member's membership of the Chartered Institute forthwith or from such date as the Council shall specify.

(b) Before suspending or terminating a member's membership in the circumstances referred to in sub-paragraph (a) of paragraph 3 of this Byelaw the Council shall notify the member concerned of the action proposed, with the reason or reasons therefor, and give him or her the opportunity, within a period of six weeks of such notification, to make written representation to the Council or a committee of the Council or to appear before the Council or a committee of the Council in person or through any representative that he or she may choose, and if the member shall elect to appear before the Council or a committee of the Council as aforesaid he or she or his or her representative (as the case may be) shall have the right to call a witness or witnesses to give evidence in his or her defence and to cross-examine any witness or witnesses called by the Council or a committee of the Council to give evidence against him or her: provided that any member of the Council or other person who shall have been previously concerned on behalf of the Chartered Institute in relation to the alleged contravention of the Code of Professional Conduct shall not take part in these proceedings.

(c) Any member whose membership is suspended or terminated as aforesaid shall remain liable to pay any unpaid appropriate subscription due from him or her.

8(2) Resignation. ... Once a corporate or other member has been notified that an investigation into his or her conduct involving any of the grounds for disciplinary action set out in sub-paragraph (a) of paragraph (3) of Byelaw (7) is to be conducted by or on behalf of the Council or that the Council is considering whether to carry out such an investigation, he or she shall not be entitled to resign from membership of the Institute until either the investigation has been completed and any conclusion notified to him or her or the Council has notified him or her that it has decided not to carry out such an investigation.

8(3) **Reinstatement.** ... Any person who has been convicted by a court of any criminal offence involving any of the grounds for disciplinary action set out in sub-paragraph (a) of paragraph (3) of Byelaw 7 and who has resigned his or her membership or whose membership has been terminated by the Council shall not normally be eligible for consideration for reinstatement within ten years.

ANNEX C: DISCIPLINARY ACTION

C1 The Council shall not use its disciplinary procedures to review the decisions of local planning authorities nor to investigate allegations of poor administration on the part of local planning authorities or other organisations.

C2 The Council will not normally investigate allegations which fall within the competence of a criminal court, civil court, industrial tribunal, Local Government Ombudsman or other duly appointed tribunal. In such cases, however, the Council reserves the right to consider whether any findings of fact by the relevant tribunal constitute a breach of the Code and if they do and if the Council accepts the findings to take appropriate disciplinary action.

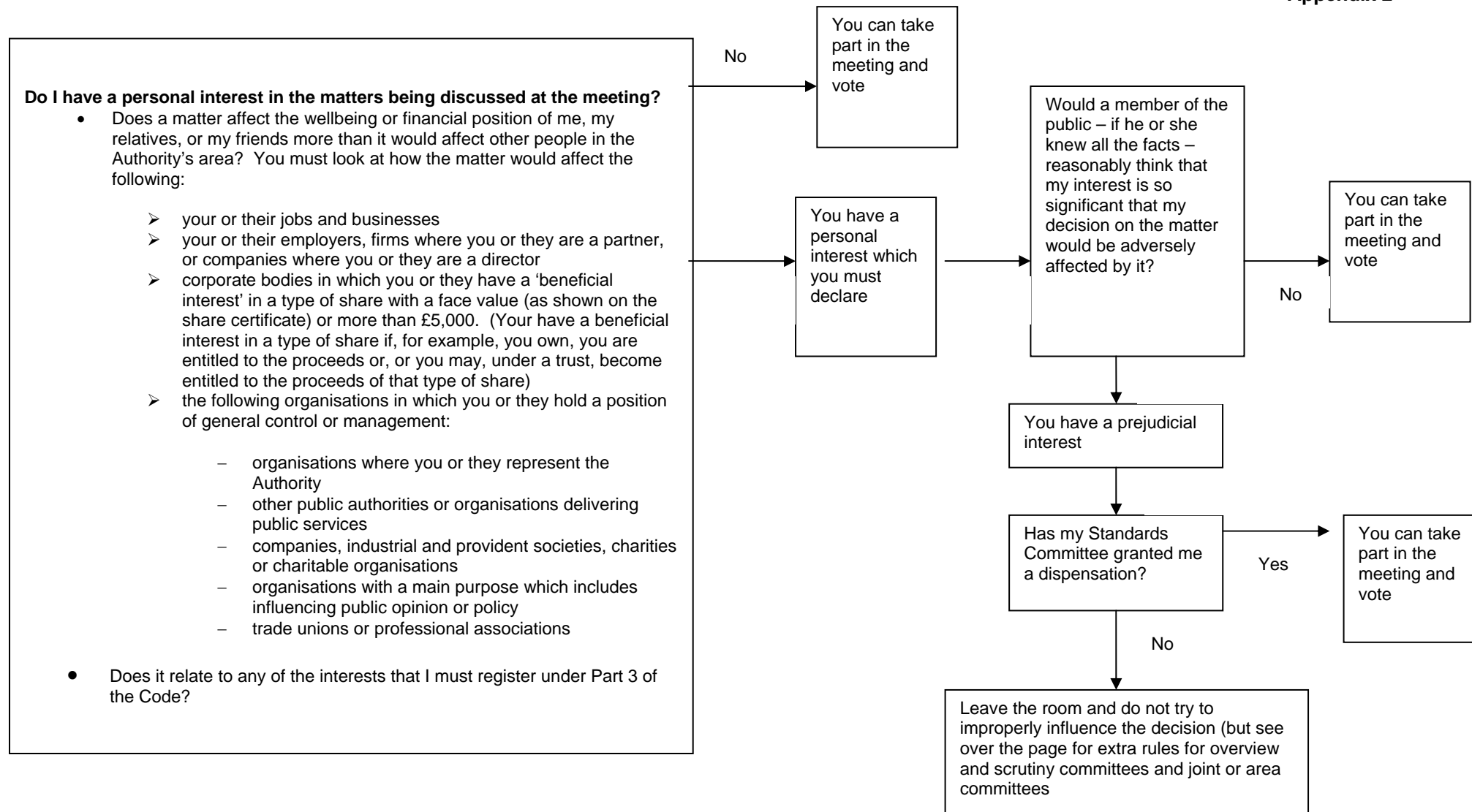
C3 Where there is a remedy that could reasonably be available to the complainant in civil proceedings the Council will initiate its own investigation only

(a) after the conclusion of any such proceedings, or

(b) upon receipt of a written undertaking from the parties concerned that no such proceedings will be commenced pending the conclusion of the Institute's investigation.

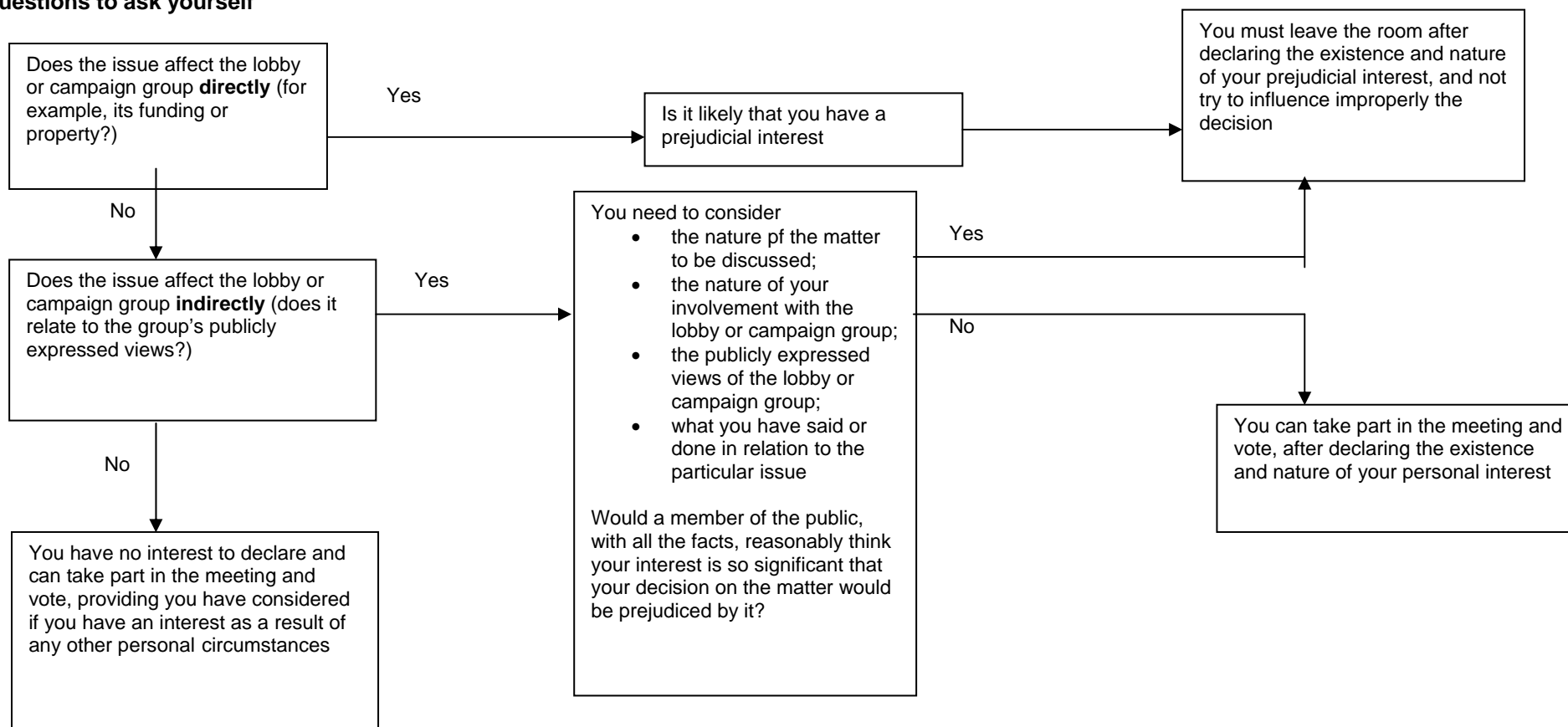
**DO I HAVE A PERSONAL INTEREST IN THE MATTERS BEING
DISCUSSED AT THE MEETING?**

Appendix 2



**DECLARING INTERESTS RELATING TO LOBBY GROUPS
QUESTIONS TO ASK YOURSELF**

Declaring interests relating to lobby groups – questions to ask yourself



APPENDIX 4

NOT USED

**HOW DO I REGISTER AND DECLARE INTERESTS
AND REGISTER GIFTS AND HOSPITALITY?**

May 2003

How do I register and declare interests, and register gifts and hospitality?

Local authorities

How do I register and declare interests, and register gifts and hospitality?

Local authorities

Introduction

This guide explains how to register and declare interests, and how to register gifts and hospitality, under the *Local Government Act 2000* and the Model Code of Conduct. It is for members of district, unitary, metropolitan, county and London borough councils, as well as the members of the Greater London Authority, the Common Council of the City of London and the Council of the Isles of Scilly. In this guide, the term 'member' refers to elected members and co-opted members. (A co-opted member is a person who is not a member of the authority but who sits on one of the authority's committees and can vote in those meetings.)

You must register your interests with your Monitoring Officer and declare any relevant interests you have in meetings or when making and recording decisions. You also need to give your Monitoring Officer details of any gifts and hospitality worth more than £25 that you receive in connection with your official duties as a member. (This does not include gifts and hospitality you receive which are not related to your role as a member, for example, Christmas gifts from friends and family.)

This guide only deals with the rules contained in the Model Code of Conduct. You should talk to your Monitoring Officer about any extra provisions in your authority's code of conduct.



Registering interests

What interests do I need to register?

You need to register any interests listed in part 3 of the Model Code of Conduct. These interests cover both financial and other interests. The information you need to provide is listed below.

Financial interests

- Your job and your businesses.
 - The name of your employer, any firm you are a partner of and any company you are a paid director of.
 - The name of any person (other than a relevant authority) who has helped you with expenses associated with your election or your duties as a member.
 - The name of any 'corporate interest'. That is, any corporate body:
 - which has a place of business or land in your authority's area; and
 - in which you have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £25,000 or 1% of the total amount invested in that corporate body by shareholders. (You have a beneficial interest in a type of share if, for example, you own, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that type of share.)
 - A description of any contracts (for goods, services or work) between the authority and you, any firm you are a partner of, any company you are a paid director of, or any of your corporate interests.
 - The address or other description of any land in your authority's area which you have a 'beneficial interest' in. (You have a beneficial interest in land if, for example, you own, you rent, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that land.) The address or other description must be good enough to identify the location. (For example, provide the address, map reference or field number.)
-

How do I register and declare interests, and register gifts and hospitality?

Local authorities

Registering interests *continued*

- The address or other description of any land which any firm you are a partner of, any company you are a paid director of, or any of your corporate interests leases from your authority.
- The address or other description of any land in your authority's area which you (alone or with others) have a licence to occupy for 28 days or more.

Other interests

- Your membership of, or position of general control or management in:
 - organisations where you represent your authority;
 - other public authorities or organisations which deliver public services;
 - companies, industrial and provident societies, charities or charitable organisations;
 - organisations with a main purpose which includes influencing public opinion or policy; and
 - trade unions or professional associations.

The Office of the Deputy Prime Minister has said that it does not intend members to register shareholdings beyond those specified in the financial interests section of the Model Code (that is, corporate interests).

You do not need to give the value of any shareholdings or land that you register.

Why do I need to register my interests?

You need to register your interests so the public, authority staff, and fellow members know which of your interests might give rise to a conflict of interest. The register is a document which can be consulted when (or before) an issue arises, and lets others think about whether or not you may have a conflict of interest.

The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a conflict might arise. It is also important for public confidence that people who are interested in your authority's meetings know about any interest that might have to be declared by you or other members.

How do I register my interests?

You give your Monitoring Officer written details of any interests you need to register (see above). Your Monitoring Officer may have a form for you to fill in.

When do I have to register my interests?

You must register your interests within 28 days of being elected or appointed as a member.

What should I do if my interests change or I have new interests?

You should tell your Monitoring Officer about any changes to your interests within 28 days of the change occurring. From time to time your Monitoring Officer may also ask you to confirm or update your list of interests.

What will the Monitoring Officer do with my list of interests?

Your Monitoring Officer must keep and update a register of all members' interests.

Will the register be available to the public?

Yes, the register must be available to the public at your authority's office at all reasonable hours.

How do I register and declare interests, and register gifts and hospitality?

Local authorities

Registering interests *continued*

Is there a standard form for the register?

No, there is no form set by law. Your authority is free to design its own register.

Declaring interests at meetings

When do I need to declare my interests?

You need to declare your interests at all meetings where the matters being discussed, or to be discussed, affect your interests.

What interests do I need to declare in a meeting?

As a first step, you need to declare any **personal interests** you have in a matter. You will then need to decide if you have a **prejudicial interest** in that matter.

What is a personal interest?

You have a personal interest in a matter if that matter affects the wellbeing or financial position of you, your relatives or your friends more than it would affect other people in the authority's area. You must look at how any decision reached in a meeting would affect:

- your and their jobs and businesses;
 - your and their employers, firms you or they are a partner of, and companies you or they are a director of;
 - corporate bodies in which you or they have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £5,000; and
 - the following organisations in which you or they hold a position of general control or management.
 - Organisations where you or they represent your authority.
 - Other public authorities or organisations which deliver public services.
-

- Companies, industrial and provident societies, charities or charitable organisations.
- Organisations with a main purpose which includes influencing public opinion or policy.
- Trade unions or professional associations.

Under the Model Code of Conduct:

- A 'relative' is a partner (someone you are married to or live with as if you were married), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, or the husband, wife or partner of any of these people.
- Other people in the authority's area are people who live in the authority's area, or who pay Council Tax or business rates to your authority.

You need only declare the interests you know about, and you do not need to investigate the business or other interests of your relatives and friends.

A personal interest can affect you, your relatives or your friends positively or negatively. So, if you or they would stand to lose by the decision, you should also declare it.

You also have a **personal interest** in a matter if it relates to any interests you must register.

What do I need to do if I have a personal interest in a matter?

You must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to you.

Do I need to declare a personal interest in a meeting if it is on the register of interests?

Yes, the Model Code says that even if your interest is shown in the register of interests, you must also declare it in meetings where matters relating to that interest are discussed.

How do I register and declare interests, and register gifts and hospitality?

Local authorities

Declaring interests at meetings *continued*

Can I stay in the meeting if I have a personal interest?

You can still take part in the meeting and vote on the matter unless your personal interest is also a **prejudicial interest**.

What is a prejudicial interest?

A prejudicial interest is one which a member of the public who knows the relevant facts would reasonably think is so significant that it is likely to adversely affect your judgement of the public interest.

You must ask yourself whether a member of the public – if he or she knew all the facts – would think that your personal interest was so significant that it would probably adversely affect your decision on the matter. If he or she would think that your judgement would be adversely affected, then you have a prejudicial interest.

You will also have a prejudicial interest if you are involved in an overview and scrutiny committee meeting which is checking a decision taken by another committee which you are a member of. However, you can be called to attend the overview and scrutiny committee meeting to give evidence or answer questions on the matter.

What is not a prejudicial interest?

The Model Code of Conduct sets out some types of interest which are not in themselves prejudicial. They are interests arising from:

- you being a member of another local authority;
 - you holding a position of general control or management in another public authority;
 - you representing your authority in an organisation;
 - your authority's functions relating to housing if you hold a tenancy or lease with the authority and are not more than two months behind with your rent (as long as the matter does not relate to your particular tenancy or lease);
-

- your authority's functions relating to school meals, transport and travelling expenses if you are a parent or guardian of a child in full-time education (unless it relates particularly to the school your child attends);
- your authority's functions relating to statutory sick pay if you are receiving this, or are entitled to this, from your authority; or
- your authority's functions relating to members' allowances or payments made under sections 173-176 of the *Local Government Act 1972*, or section 18 of the *Local Government and Housing Act 1989*.

In these situations you will still need to consider whether there are any other factors present that may make the interest prejudicial.

What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest in a matter being discussed at a meeting, you must declare that you have a prejudicial interest, and the nature of that interest, and then leave the room. You cannot take part in discussions on that matter or try to improperly influence anyone's decision on the matter.

It is important that you leave the room so you and your authority are seen to be acting in an appropriate and unbiased way, and to remove pressure from the remaining members.

What about overview and scrutiny committee meetings?

If you have a prejudicial interest you can still take part in an overview and scrutiny committee or joint or area committee meeting unless that interest is financial, the committee is checking a decision taken by another committee which you are a member of, or the committee is carrying out the functions of your authority or its executive. (This exemption aims to allow the highest number of people to take part in overview and scrutiny committees or joint or area committees and to allow the committee to benefit from the views of experts in the matters being discussed.)

How do I register and declare interests, and register gifts and hospitality?

Local authorities

Declaring interests at meetings *continued*

If the overview and scrutiny committee is checking a decision taken by another committee which you are a member of, you can still be called to attend the meeting to give evidence or answer questions on the matter.

Can I get a 'dispensation' to allow me to take part in meetings where I have a prejudicial interest?

You can apply to your Standards Committee for a dispensation if:

- over 50% of the authority or committee members would be prevented from taking part in a meeting because of prejudicial interests; or
- the political balance at the meeting would be upset.

If the Standards Committee approves your application, it must grant the dispensation, in writing, before the meeting is held. If you need a dispensation, you should apply for one as soon as reasonably possible.

What if I'm a member of the executive or cabinet?

Dispensations are not available to allow individual members of the executive to make decisions on matters they have a prejudicial interest in. If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority will have to make other arrangements as set out in sections 14-16 of the *Local Government Act 2000* (that is, the decision can be delegated to an employee, another cabinet member, the full executive or a committee of the executive).

Where do I go if I need advice on my interests?

If you have any questions, speak to your Monitoring Officer.

The flowchart at the end of this document has been designed to help you decide what interests you need to declare and what you must do to declare them.

Registering gifts and hospitality

What gifts and hospitality do I need to register?

You need to register any gifts or hospitality worth over £25 that you receive in connection with your official duties as a member.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family. However, you should always consider whether any gifts or hospitality could be seen as being connected to your role as a member. If you are in doubt, speak to your Monitoring Officer.

You may have to estimate how much a gift or some hospitality is worth. You do not need to register gifts and hospitality you do not accept.

How do I register gifts and hospitality I receive?

You must give your Monitoring Officer written details about the gifts and hospitality you receive in connection with your role as a member of the authority.

When do I have to register them?

You must register the gift or hospitality within 28 days of receiving it.

Will the register be open to the public?

We recommend that the register of gifts and hospitality should be available to the public in the same way as the register of interests. This does not have to be done by law, and the register should only be made available if the members concerned agree to this.

Declaring interests – questions to ask yourself

If you are in an overview and scrutiny committee meeting or a joint or area committee meeting, there are extra questions that you must ask yourself. See the flowchart over the page as well as this flowchart.

Do I have a personal interest in the matters being discussed at the meeting?

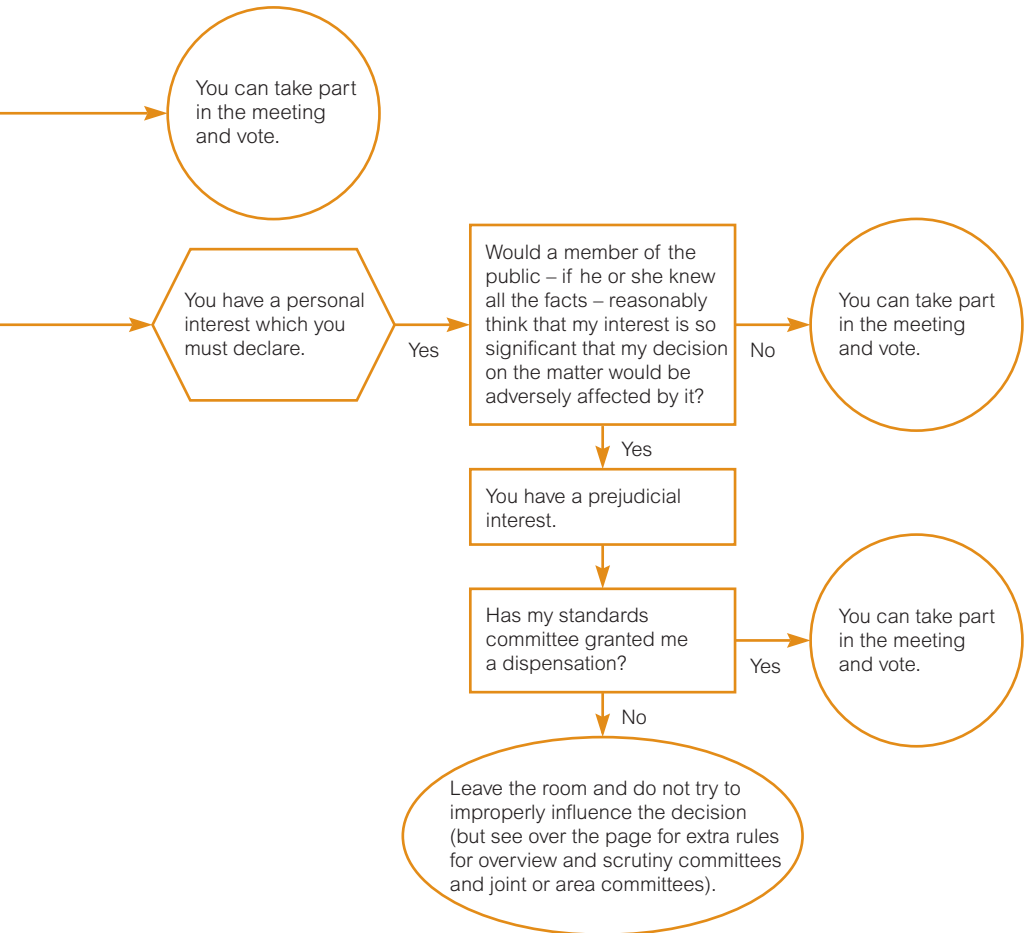
- Does a matter affect the wellbeing or financial position of me, my relatives, or my friends more than it would affect other people in the authority's area? You must look at how the matter would affect the following.
 - Your or their jobs and businesses.
 - Your or their employers, firms where you or they are a partner, or companies where you or they are a director.
 - Corporate bodies in which you or they have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £5,000. (You have a beneficial interest in a type of share if, for example, you own, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that type of share.)
 - The following organisations in which you or they hold a position of general control or management.
 - Organisations where you or they represent the authority.
 - Other public authorities or organisations delivering public services.
 - Companies, industrial and provident societies, charities or charitable organisations.
 - Organisations with a main purpose which includes influencing public opinion or policy.
 - Trade unions or professional associations.
- Does it relate to any of the interests that I must register under part 3 of the Code?

No

Yes

Register of interests – things I must register

- My job and businesses.
- The name of my employer, any firm I am a partner of and any company I am a paid director of.
- The name of any person (other than a local authority) who has helped me with expenses associated with my election or my duties as a member.
- The name of any 'corporate interests'. That is, any corporate body:
 - which has a place of business or land in my authority's area; and
 - in which I have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £25,000 or 1% of the total amount invested in that corporate body by shareholders. (You have a beneficial interest in a type of share if, for example, you own, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that type of share.)
- A description of any contracts (for goods, services or work) between the authority and me, any firm I am a partner of, any company I am a paid director of, or any of my corporate interests.
- The address or other description of any land in my authority's area which I have a beneficial interest in. (You have a beneficial interest in land if, for example, you own, you rent, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that land.)
- The address or other description of any land which any firm I am a partner of, any company I am a paid director of, or any of my corporate interests leases from my authority.
- The address or other description of any land in my authority's area which I (alone or with others) have a licence to occupy for 28 days or more.
- My membership of, or position of general control or management in:
 - organisations where I represent my authority;
 - other public authorities or organisations which deliver public services;
 - companies, industrial and provident societies, charities or charitable organisations;
 - organisations with a main purpose which includes influencing public opinion or policy; and
 - trade unions or professional associations.



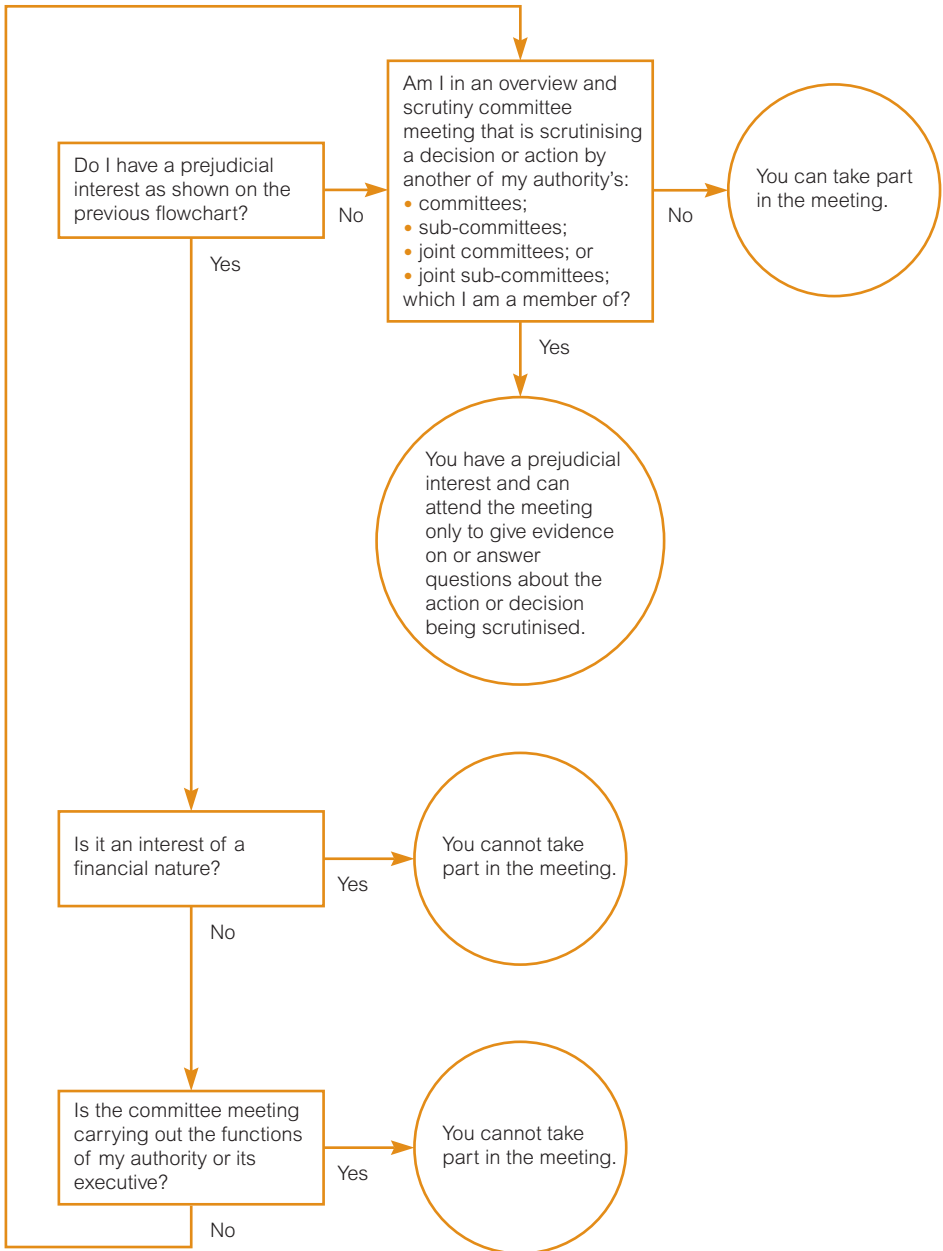
Interests which are not in themselves prejudicial

You may not have a prejudicial interest if the matter relates to:

- another local authority which you are a member of;
- another public authority in which you hold a position of general control or management;
- an organisation where you represent your authority;
- your authority's functions relating to housing if you hold a tenancy or lease with the authority and are not more than two months behind with your rent (as long as the matter does not relate to your particular tenancy or lease);
- your authority's functions relating to school meals, transport and travelling expenses if you are a parent or guardian of a child in full-time education (unless it relates particularly to the school your child attends);
- your authority's functions relating to statutory sick pay if you are receiving, or are entitled to, this from your authority; or
- your authority's functions relating to members' allowances or payments made under sections 173-176 of the *Local Government Act 1972* or section 18 of the *Local Government and Housing Act 1989*.

In these situations you will still need to consider whether there are any other factors present that may make the interest prejudicial.

**Overview and scrutiny committee and joint or area committee meetings
– questions to ask yourself**





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Confidence in local democracy

**LOBBY GROUPS, DUAL-HATTED MEMBERS
AND THE CODE OF CONDUCT**

September 2004



Lobby groups, dual-hatted members and the Code of Conduct Guidance for members

Confidence in local democracy

This guide

This guide is for members of:

- district, unitary, metropolitan, county and London borough councils;
 - parish and town councils;
 - English and Welsh police authorities;
 - fire authorities (including fire and civil defence authorities);
 - the London Fire and Emergency Planning Authority;
 - passenger transport authorities;
 - the Broads Authority;
 - national park authorities;
 - the Greater London Authority;
 - the Common Council of the City of London;
 - the Council of the Isles of Scilly.
-

Introduction

In the guidance *How do I register and declare interests and register gifts and hospitality?* we outlined your general responsibilities to register and declare interests that might affect the performance of your duties as a member. But for members of lobby groups and members who sit on more than one relevant authority and other public bodies (dual-hatted members), deciding whether you have an interest, and whether that interest is personal or prejudicial, can sometimes be difficult. It can also be difficult to know when to rely on paragraph 10(2) of the Code of Conduct (paragraph 9(2) for parish councils) to allow you to participate in meetings.

This guide will help you decide how to act in these circumstances. It's in three parts:

- **Membership of lobby groups**

Practical advice and examples to help you understand when membership of a lobby or campaign group may give rise to personal and prejudicial interests, and other important principles and legal requirements to consider when you are making decisions.

- **Dual-hatted members and paragraph 10(2)**

Explains the interests that can arise from service on other authorities and public bodies, and provides practical advice and examples to help you decide when to rely on the paragraph to participate in meetings.

- **If you have a prejudicial interest**

Advice on what you can do if you have a prejudicial interest.

Membership of lobby groups

As a member of your authority, you are at the heart of local democracy, making a difference in people's daily lives. You represent people in your area and take forward concerns of individuals, neighbourhoods and interest groups, drive change, participate in community and action groups, and make decisions for the benefit of the community as a whole.

Sometimes, these roles and responsibilities conflict, and you need to strike a balance between representation, driving change and ensuring the authority can even-handedly decide matters on their merits — and be seen to be doing so.

Remember that the Model Code of Conduct is not the only thing you need to consider: it does not change the legal principles that apply to decision-making in your authority. You must also act in accordance with the General Principles which underpin the Code of Conduct. So, for example, you should not place yourself in situations where your honesty and integrity may be questioned, and you must reach your own conclusions on the issues before you. The law requires you to take decisions fairly, on the merits known to you at the time you make the decision. You should not reach a final conclusion before you come to take a decision on an issue.

This guidance only covers interests and issues that arise from your membership of a lobby or campaign group. As with any matter, you must also consider whether or not you have a personal or prejudicial interest in the issue due to personal circumstances. For example, it may affect your house or job, or those of your family and friends.

Principles

When you are considering what interests arise from your membership of a lobby or campaign group, you should keep in mind the General Principles that underpin the Code of Conduct, set out in the *Relevant Authorities (General Principles) Order 2001*.

The first General Principle states that members should "serve only the public interest". It would be wholly unreasonable to expect you to be devoid of general views about a range of local issues. In fact, you may

well have been elected because of your views on those issues. The Standards Board for England believes that it would not serve the public interest for people with strong views on local issues to be discouraged from involvement in local government.

However, you also need to consider other principles:

- the second General Principle states: "members should not place themselves in situations where their honesty or integrity may be questioned";
- the third General Principle states: "members should make decisions on merit";
- the sixth General Principle states: "members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions".

Your statements and activities should not create the impression that your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision. Public confidence in the probity of decision making is paramount.

Personal interests arising from membership of lobby groups

Membership of lobby and campaign groups should be included on your register of interests, as these are bodies "whose principle purposes include the influence of public opinion or policy". The Code of Conduct requires you to declare a personal interest in any matter that relates to an interest you must include in your register of interests. So you are required to declare a personal interest if you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority.

You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions. You can continue to participate unless the interest is also prejudicial.

Even if your lobby group does not keep a formal membership list, the Code of Conduct still applies to you in the same way. If you are acting as a member — perhaps attending meetings or participating in group activities — you should still register your membership of the group and declare interests following the guidance in this booklet.

Prejudicial interests arising from membership of lobby groups

Under the Code of Conduct, you only have to withdraw from an item in a meeting in which you have a personal interest, if that interest is also prejudicial — that is, if the issue is so significant that a member of the public with knowledge of the relevant facts would reasonably think that your judgment of the public interest is likely to be prejudiced. As always, each case depends on its merits. You should consider the points outlined below in each case, to help you decide whether or not your personal interest is also prejudicial.

If you have a prejudicial interest in a matter, you should declare the existence and nature of the interest and withdraw from the meeting before the matter is discussed. You should not attempt to influence improperly the discussion or decision.

Direct impact on lobby and campaign groups

If the matter to be discussed will have a direct impact on a lobby or campaign group you belong to, you are likely to have a prejudicial interest. This includes anything that directly affects the rights and obligations of a group to which you belong.

For instance, if, during your council work, you discuss whether to grant funding to your lobby group, or to approve a planning application submitted by the group, you would normally have a prejudicial interest. You should never take part in discussions of this nature.

Indirect impact on lobby and campaign groups

Matters that relate to the things a group campaigns on or has expressed public opinions about, without affecting the operation of the group directly, have an indirect impact on that group. If the matter to be discussed relates

indirectly to a lobby or campaign group you belong to, you may have a personal or prejudicial interest in it.

To determine if you have a prejudicial interest in a matter of indirect impact, consider the following factors:

- the nature of the matter to be discussed;
- the nature of your involvement with the lobby or campaign group;
- the publicly expressed views of the lobby or campaign group;
- what you have said or done in relation to the particular issue.

You must weigh up all these factors in relation to the specific matter being discussed and consider whether a reasonable member of the public who knows the relevant facts would think it likely that your judgment of the public interest would be prejudiced. These factors are explained in more detail below.

Factors to consider

The more focused your group is on a particular issue, the more involved and active you have been, and the more committed you appear to a particular outcome, the more likely it is that your interest will be prejudicial. The test is not whether your approach to a particular issue will be affected by an interest, but whether an informed member of the public would think there is a real possibility that you could be biased. In these circumstances, always seek advice from your monitoring officer or parish clerk.

The nature of the matter is one of the most important factors to consider, and one to which The Standards Board for England gives particular weight. In our view, a reasonable member of the public who knows the relevant facts will appreciate that those involved in local government are likely to have strong views on a range of issues, based on their experiences and political outlook. These views may have been reflected in the member's election manifesto; even members with no political affiliation may have sought election on the basis of their views on matters of local controversy. Therefore, members will tend to have an opinion on many matters that arise, and these opinions may be reflected in membership of particular campaign or lobby groups.

The Standards Board for England believes that, in many cases, opinions of this kind may not amount to a prejudicial interest, even if you belong to a campaign or lobby group. Campaigning about a particular issue does not, in our view, indicate a possibility that you will not fairly consider the evidence and arguments presented. Simply approaching the issue from a particular point of view does not make an interest prejudicial. This is particularly relevant to budget issues and matters of broad policy, such as setting key priorities in fields like education, transport and social services. In our view, it is highly unlikely that campaigning on issues of this kind will amount to a prejudicial interest.

You may need to consider discussions on policy decisions and implementation more carefully. Here, specific decisions are being made about specific places, individuals and organisations. The Code of Conduct is not intended to prevent you from campaigning on issues like these, but it is possible that you could identify yourself so closely with a particular outcome that an informed member of the public would reasonably think your judgment was prejudiced.

Regulatory matters, such as planning and licensing, are particularly sensitive. For instance, if you are considering planning applications, you must follow a formal administrative process involving rules of procedure and rights of appeal, and you are expected to act reasonably and fairly when making your decisions. In both planning and licensing matters, the public is entitled to make applications and have them determined in accordance with the law. Often, individual rights under the *European Convention on Human Rights* are involved.

In our view, you should adopt a particularly cautious approach to planning and licensing matters. Membership of a group that campaigns for or against a particular planning or licensing application may well constitute a prejudicial interest. You should avoid committing yourself on any matter that may fall to be decided by you as a member of a planning or licensing committee.

Different considerations apply when an authority is consulted for its views on a matter in which it does not have the power to take a final decision.

A reasonable and informed member of the public would accept that campaigners should be able to participate in consultation, even in consultation on planning and licensing matters. In these cases, you should declare a personal, but not prejudicial, interest, even if you have campaigned heavily on the issue.

Executive members

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. It makes no difference if your interests arise through your involvement in a lobby or campaign group. So if your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions, providing you declare your interest. You can also exercise delegated powers in the matter.

If you have a prejudicial interest in a matter, you are barred from discussions and decision-making about that matter in cabinet. You also should not participate in any early consideration of, or exercise any delegated powers in, that matter. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence. However, you can still be called to give evidence on the matter to an overview and scrutiny committee.

Examples of indirect impact on lobby groups

These are hypothetical examples to help illustrate our general views. In a real situation, you must be careful to consider all the relevant circumstances on their merits, and seek the advice of your monitoring officer or parish clerk if you are in any doubt. He or she can provide specific advice about your situation, help you decide if you have an interest, and whether that interest is personal or prejudicial.

If you were a senior member of a **national research and lobby group** which made strong representations to your council about the council's transport plan, you would have a personal interest in any discussions

involving that transport plan. However, that interest would not be prejudicial.

If you were an annual member of **English Heritage**, you would have a personal interest when determining an application for listed building status if English Heritage had expressed support for the application. However, that interest would not be prejudicial unless other factors were involved. If English Heritage had not expressed a view on the application, you would not have a personal or prejudicial interest.

If you were a leading and active campaigner in the **Coalition of Developers Against a National Park**, you would have a personal interest when considering a government consultation paper on a proposal for a new national park in your authority's area. However, this interest would not be prejudicial.

If you were a leading campaigner in the **Expand Our Leisure Centre** campaign, you would have a personal interest when discussing your authority's capital plan if it involved some change to the leisure facilities in your authority's area. However, as this project is only one part of the plan, you would not have a prejudicial interest in the whole discussion and decision on the plan. Clearly, if you were part of the committee discussing whether to expand that individual leisure centre, you would have a prejudicial interest.

If you were the main public spokesperson for the **Save Our Primary School** action group, you would have a personal, and probably prejudicial, interest in any decision by the council about the future of the school. In this case, your very close association with the campaign group would be likely to be viewed as impairing your judgment of the public interest. If you were an ordinary member of the action group without any active role in the campaign, you would have a personal, but not prejudicial, interest.

If you were a vocal member of the **No More Incinerators** group, and sat on a planning committee to determine an application for a new incinerator, you would have a personal and prejudicial interest in the matter. Your participation might also be challenged on the grounds of predetermination — see the following section: 'Have I made up my mind about the issue?'.

Have I made up my mind about the issue?

This guidance reflects what should be current normal practice in local government when dealing with the impact of membership of lobby and campaign groups. The Model Code of Conduct has not introduced new restrictions.

As noted earlier, you should not reach a final conclusion on an issue before you come to take a decision on it. This doesn't mean you cannot form a view about the matter before the meeting, but if you have formed a provisional view, you must still be willing to consider all arguments presented at the meeting and be open to persuasion on the merits of the case. If you are not, your decision might be open to legal challenge because of the common law concept of predetermination. This is a legal concept that the courts have always applied to local authority decision-making. It predates the Code of Conduct and is not altered by it. In our view, the courts are the appropriate forum for determining if a decision is flawed because a member was not open to persuasion on the merits of the case.

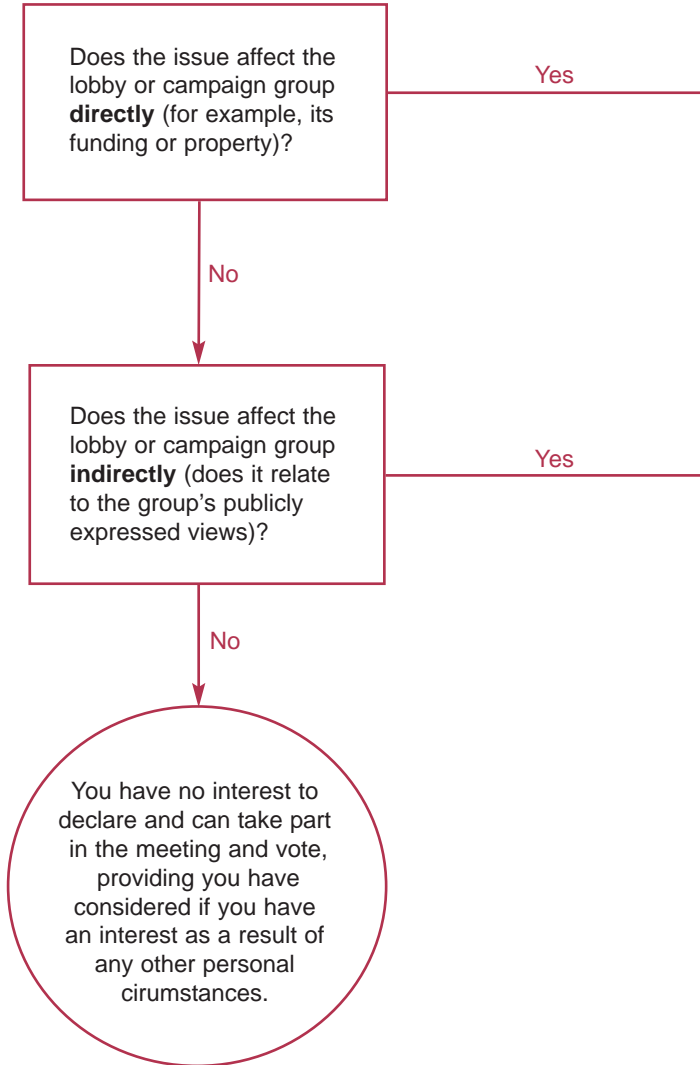
For instance, if you made a particular issue a centrepiece of your election campaign, or were elected on the basis of a single-issue campaign, but are not a member of a related lobby group, you will not have a personal or prejudicial interest under the Code of Conduct. However, you still need to consider whether you are genuinely open to persuasion about the matter.

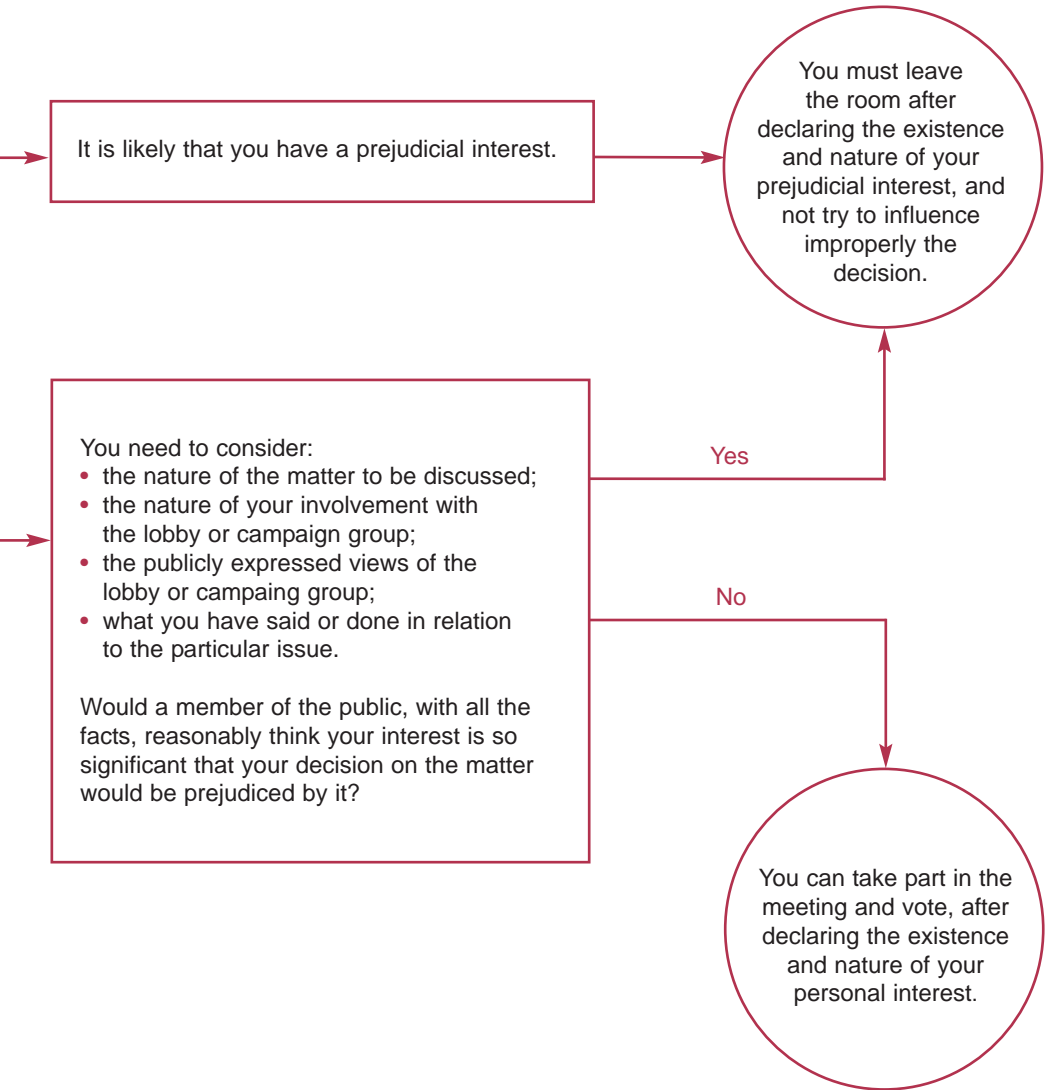
A member of the executive asked to draw up proposals for discussion at cabinet is entitled to form a preliminary view on the proposals. Such a preliminary view would not normally mean that you were closed to persuasion when the matter was discussed in detail at the cabinet.

Publicly stating that you are open to persuasion may not be sufficient to prove you are not predetermined. You must genuinely be open to persuasion. Clearly a statement such as "This application will only get approval over my dead body," would be a strong indication that you are not open to persuasion on the merits of the case.

For further advice about the law on predetermination, contact your monitoring officer or parish clerk.

Declaring interests relating to lobby groups — questions to ask yourself





It is likely that you have a prejudicial interest.

You must leave the room after declaring the existence and nature of your prejudicial interest, and not try to influence improperly the decision.

You need to consider:

- the nature of the matter to be discussed;
- the nature of your involvement with the lobby or campaign group;
- the publicly expressed views of the lobby or campaign group;
- what you have said or done in relation to the particular issue.

Would a member of the public, with all the facts, reasonably think your interest is so significant that your decision on the matter would be prejudiced by it?

Yes

No

You can take part in the meeting and vote, after declaring the existence and nature of your personal interest.

Dual-hatted members and paragraph 10(2)

Paragraph 10(2) deals with situations where members have interests arising from service on other authorities and public bodies — such as a governor on a school board or a trustee of a village hall — where the rules in relation to prejudicial interests might interfere with the proper conduct of authority business.

In the Model Code of Conduct for parish councils, it's actually paragraph 9(2), but the provisions are similar. In this guidance, where we refer to paragraph 10(2), we also mean 9(2) for parish councils.

This guidance provides our view on what the paragraph aims to achieve, and how you should consider your interests in the circumstances it describes. Ethical standards officers also apply these principles when investigating allegations about these kinds of interests.

Given the difficulty of this area, you should always seek the advice of your monitoring officer or parish clerk when considering these kinds of interests. He or she can provide specific advice about your situation, help you decide if you have an interest, and whether that interest is personal or prejudicial.

The aims of paragraph 10

Paragraph 10 aims to balance three principles:

- that members must withdraw from consideration of issues where their interests conflict with their public duties;
 - that the rules on interests should not obstruct members who are involved in other forms of public service, such as another tier of local government;
 - that the rules on interests are not intended to interfere with the proper conduct of council business.
-

Paragraph 10 of the Model Code of Conduct for local authorities states:

- 10.1 *Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgement of the public interest.*
- 10.2 *A member may regard himself as not having a prejudicial interest in a matter if that matter relates to:*
- a. another relevant authority of which he is a member;*
 - b. another public authority in which he holds a position of general control or management;*
 - c. a body to which he has been appointed or nominated by the authority as its representative;*
 - d. the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;*
 - e. the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;*
 - f. the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and*
 - g. the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.*
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The provisions of sub-paragraphs 10(2)(d–g) differ slightly in all the Model Codes of Conduct, reflecting the varied powers and responsibilities of each authority, but they serve broadly the same function.

The provisions of sub-paragraphs 10(2)(d–g) apply to a specific set of situations that commonly arise during authority business, such as setting allowances for members of the authority. In these areas, it is clear that members will not have a prejudicial interest in related discussions and members should have no difficulty applying the provisions.

However, interpretation of sub-paragraphs 10(2)(a–c) can sometimes be difficult because they apply to a much broader set of situations, where members belong to outside bodies. Reliance on these sub-paragraphs requires greater care.

Understanding sub-paragraphs a–c

This section of the Code of Conduct is intended to remind members that some interests arising from involvement in other forms of public service should not unduly restrict the activities of the members concerned.

If you have a personal interest in a matter as a result of your membership of one of these groups, you still need to consider whether that interest is prejudicial. You should apply the same test as for any interest: would a reasonable member of the public who knew all the relevant facts think that your interest was so strong that your judgment would be prejudiced?

Many interests that arise from service on other public bodies or as a representative of the authority will not be prejudicial. A reasonable member of the public will recognise that there is no objection, in principle, to an individual serving on a number of public bodies, and the fact that an issue may relate to membership of another such body will not necessarily indicate that the member's judgment of the public interest will be prejudiced.

However, in some cases a reasonable member of the public might consider that such an interest is prejudicial. These provisions do not exempt you from the rules governing prejudicial interests, so if your

interest is prejudicial, you must withdraw from the room and not attempt improperly to influence the discussion.

Dual-hatted members

Considering a matter at more than one authority

The Code of Conduct does not automatically prevent you from considering the same issue at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 10(2)(a) to members of "another relevant authority" reinforces this point.

So, for example, if an issue comes up for discussion at both the parish and district level, and you sit on both authorities, you should:

- at the parish level, make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier;
- at the district level, declare a personal (but not prejudicial) interest arising from your membership of the parish council which has already expressed a view on the matter, and make it clear that the parish council's view does not bind you and that you are considering the matter afresh.

These guidelines apply even if a proposal has a direct impact on a particular location. For example, to continue the example of a parish and district councillor, there is no objection, in principle, to you speaking and voting on issues in the district council's development plan that particularly affect your parish. Of course, you must still consider if you have a prejudicial interest arising from the impact of the proposals on your well-being or financial position. In such circumstances, it would not be appropriate for you to rely on paragraph 10(2).

Considering applications for decision, such as licensing and planning

In some situations, it is unrealistic to expect a member of the public to believe you would disregard the interests of another public body on which you serve. For example, you should not sit on decision-making bodies, such as planning and licensing committees, when they decide applications

from an authority on which you also serve. Even though these situations fall within the scope of sub-paragraphs 10(2)(a) and (b), a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances.

Another common situation is a contract between the two authorities, such as a parish council renewing its lease on a building owned by a district council. In this case, a member of both bodies could not participate in negotiations over the lease renewal. He or she would clearly have a conflict between seeking the highest possible rent for the district council and the lowest rent for the parish council.

Members of outside bodies

Discussing matters that relate to the body generally

As with all interests, a member of the public with all the relevant facts is less likely to think that your judgment would be prejudiced if the matter you are discussing relates indirectly, or in a general way, to the group you belong to, or will otherwise not have a significant impact on that group. For instance, if you are a school governor, you will not have a prejudicial interest in setting broad education objectives and spending priorities for the council: clearly, these discussions relate to all schools. However, you are likely to have a prejudicial interest in matters that relate specifically to the school of which you are a governor, such as a decision on whether to close your school.

Members of outside bodies

With an advisory role at council

If you are a member of an outside group and a related issue comes up for discussion at your authority, but you are participating in an advisory capacity, in our view, you are likely to have few problems. For example, it would be entirely appropriate for a county councillor who was also a school governor to take part in an all-party committee advising the

council's executive on a private finance initiative scheme affecting the member's school. The school governor's knowledge and experience of local schools would be invaluable to the work of the advisory committee. The fact that the county councillor was not a member of the decision-making body (the executive) means that there would be no question of improper decision-making.

Similarly, where the decision-making power has been delegated to an individual portfolio-holder, a member of the executive who was also governor of the school affected could properly take part in executive discussions, provided he or she was not the decision-taker on the particular issue.

Members of parish community groups

It is common for parish councillors to be involved with other community bodies, such as a village hall management committee or its trustees. Sometimes, the parish council may nominate you to represent the council on one of these bodies. Overlapping responsibilities of this kind are a normal part of life in small communities, and these circumstances are covered by paragraph 9(2)(c) of the Code of Conduct for parish councils. In many circumstances, it will be appropriate for you to participate in council discussions and decisions relating to the relevant body. However, if there could be a genuine conflict between the interests of the parish council and the outside body on important matters of principle or the allocation of significant public funds, a member of the public would think that your close involvement in the body is likely to prejudice your judgment of the public interest.

Understanding parts d–g

The second part of paragraph 10(2) relates to interests that are likely to arise frequently in the course of authority business. In the Model Codes of Conduct for local authorities, fire and joint authorities, and national park and the Broads authorities, there are four sub-paragraphs (d–g); in the Model Codes of Conduct for parish councils and police authorities, there are only two — (d) and (e).

You do not need to declare a prejudicial interest in situations covered by these parts of the Code of Conduct, but you should still declare a personal interest. The rules on prejudicial interests are not intended to interfere with the proper conduct of council business, and these sub-paragraphs help to ensure that they don't.

For instance, one of the sub-paragraphs enables members to set the level of certain allowances that it defines. Similarly, if you are a local authority tenant, you are allowed to discuss matters relating to the housing functions of your authority, provided that you do not have rent arrears of more than two months and the matters under discussion do not relate to your tenancy. In each case, you should still declare a personal interest, but you can remain and participate in the meeting.



If you have a prejudicial interest

If you have a prejudicial interest in a matter to be discussed, you must leave the room and not seek to influence improperly the decision. Faced with this situation, there are a number of things you can do instead, and some additional things that you cannot do.

What you can do

As a councillor or member of another authority, your status means that you give up certain rights that other members of the public may exercise, such as the right to speak about your own planning applications. However, you can still present your views to the meeting through some other means that do not involve improperly influencing the decision:

- you can make written representations, providing you disclose the existence and nature of your interest and do not seek preferential consideration for your representations. Such written representations in a private capacity can be made to officers involved, but not to individual members;
- in the case of planning applications, you can use a professional representative to make an application on your behalf, avoiding any appearance of impropriety;
- if constituents from your area have views about a matter in which you have a prejudicial interest, you could arrange for another member of the authority to present those views. You should formally advise your constituents about your interest and inform them that the other member will represent their views on the issue. When representing the views of your constituents, the other member should make it clear to the committee or officers that he or she is acting in your place because you have a prejudicial interest in the matter.

What you cannot do

- You cannot be present in the public gallery or speak as a member of the public, even during separate public discussion sessions.
 - You should not make written representations to members of the relevant committee (you should submit them only to the relevant officers).
-

- To prevent any appearance of improper influence, you should avoid discussing the matter with any member of the authority, even to ask a ward councillor to present your views in your absence (but you are permitted to approach other members to represent the views of your constituents).
 - You should certainly not attempt to lobby committee members about the matter, before or after a meeting, attempt to use your status as a member to influence consideration of a submission, or try to get officers to change a decision or recommendation.
-

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Confidence in local democracy

**GUIDELINES FOR APPLICANTS, OBJECTORS AND OTHER INTERESTED
PARTIES WISHING TO ADDRESS THE PLANNING COMMITTEE**

Notes

If after reading this leaflet, you wish to clarify any aspect of an application or to find out when the application is to be considered please contact the:

Planning Policy & Control Unit

Telephone: 01609 780780 Fax: 01609 532540

But remember, if you wish to present your views in person you should, at the earliest opportunity, and certainly not

later than three working days before the relevant committee meeting, tell

Committee Services.

Telephone: 01609 780780 Fax: 01609 780447

Email: committee@northyorks.gov.uk

Or write to:

**Head of Committee Services,
North Yorkshire County Council,
County Hall,
NORTHALLERTON,
North Yorkshire.
DL78AD**

Guidelines for Applicants, Objectors & Other Interested Parties Wishing to Address the Planning Committee

The County Council allows interested parties the opportunity to present to the Planning Committee their views on Planning Applications

**This Leaflet tells you how
to go about it.**

What kind of planning application does the scheme apply to?

The scheme applies to all applications which are to be determined by the County Council's Planning Committee.

These are for:

- Mineral workings and waste management facilities such as quarries, landfill sites or waste incinerators
- The County Council's own development proposals such as educational facilities, new roads, Council offices or depots.

It does not apply to applications on which the County Council is a consultee, or to other items of business on the agenda.

How to make your representation

- Where possible all objections should be made in writing. This will allow them to be summarised in the Committee Report and considered by members in advance of their decision;
- In addition or alternatively you may attend the Committee Meeting and present your views in person

Which objectors will be allowed to speak?

Any Parish Council/Parish Meeting representative or person objecting to a planning application. However, the following requirements should be noted:

- Except at the discretion of the Chairman, where objections are from individuals or groups normally a single spokesperson will be heard;
- A Parish Council/Parish Meeting or individual objector can nominate an agent or representative to speak on their behalf.

Who else will be allowed to speak?

The applicant will be offered the opportunity to address the Committee. If the applicant does not wish to speak, one person representing all who wish to make representations in favour will be allowed to address the Committee.

Views of statutory consultees and other formal bodies will be clearly set out in the Committee Report and with the exception of Parish Councils / Parish Meetings they will not be allowed to present their objections to the Committee unless in the opinion of the Chairman there are exceptional circumstances.

How long can people speak for?

A balance has to be struck between the length of time allowed for speakers and the efficient conduct of the Committee's business.

Except at the discretion of the Chairman no objector, applicant (or their representative) or Parish Council Parish Meeting representative will be allowed to speak for more than 3 minutes.

Where a matter is raised which is clearly not capable of being taken into account as a material planning consideration the Chairman shall have the discretion to intervene and, if necessary, disqualify that person from speaking further.

Will there be more than one opportunity to speak?

Each person or Parish Council/Parish Meeting entitled to address the meeting shall have only one opportunity to do so in respect of any application being considered. That will normally be at the meeting which decides whether or not permission should be granted.

The Chairman will have the discretion to allow further opportunities to speak but this will only be exercised in exceptional circumstances.

What is the procedure for speaking at the Committee meeting?

Before the Meeting:

- If you wish to be heard in person (or through your representative) you should contact Committee Services at the earliest opportunity. Requests to speak received less than three working days before the meeting will not be allowed.

At the Meeting:

- You will be invited to address the Committee following the presentation of the Committee Report by an officer of the Council on the relevant application.
- Parish Councils/Parish Meetings will be heard first followed by an individual objector (or nominated spokesperson where more than one) and finally the applicant.
- With the Chairman's permission the objectors and the applicant may be questioned by Members of the Committee or by officers about the points made.

SITE VISIT LEAFLET

Notes

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Guidelines for Applicants, Objectors and other Interested Parties in respect of Site Visits conducted by the Planning and Regulatory Functions Committee

This leaflet tells you about what will happen at site visits

Why do the Planning and Regulatory Function Committee conduct site visits?

The Committee may decide to visit the site of a planning application before they consider the application if: -

- *the scale or impact of the proposed development is difficult to understand from plans/photographs*
- *there are clear planning reasons for conducting a site visit*

An officer recommendation, request from a Councillor, or other interested party, or development which has attracted a large number of objections will not automatically lead to a site visit being carried out

Who will usually attend at site visits?

- *Members (and substitute Members if they are to attend the meeting itself) of the Planning and Regulatory Functions Committee will attend*
- *One or more County Council Planning Officer(s)*
- *In some cases other County Council officers may be required to attend, i.e. highway, heritage or conservation officers*

No other parties will usually be invited to attend at the site visit unless considered necessary by the Committee or the Planning Officers

The applicant or their agents will be notified of the date and time for the site visit, but should not normally be in attendance for the visit unless there are legal or insurance requirements necessitating their attendance

If the attendance of the applicant cannot be avoided consideration will be given to inviting representatives of the objectors to observe only. This is in the interests of fairness.

Should the applicant and/or objectors attend they may not make representations to the Committee while on the site visit.

Purpose of the site visit

- *To enable the Committee to see the site of the proposed development*
- *To facilitate the Committee's understanding of the scale and impact of the proposed development on the site and the wider area*
- *For the Planning Officer to draw to the attention of the Committee any relevant issues relating to the site and proposed development – this includes matters raised by parties who have made representations about the application*

A site visit is not a meeting to discuss the planning merits of the scheme, make decisions nor will it normally be used to receive representations about the development

What will happen at the site visit?

- *The site visit will be conducted in a formal manner – the Chairman will open the meeting and explain the purpose and conduct of the meeting*
- *If other parties are present, e.g. applicant, objectors, public, the Chairman will outline the procedure for the meeting*
- *The Planning Officers will highlight issues relevant to the site inspection and other material planning considerations and draw attention to the main features of the site*
- *Other officers, i.e. highways officers, will then be able to highlight relevant issues to the site and point out relevant features*
- *The Committee members can ask questions of the officers and also point out relevant features*
- *If the applicant, objectors or public are in attendance they will not normally be entitled to participate in the meeting except in exceptional circumstances or if a point is to be clarified*

- *The applicant, objectors or public in attendance should not try and speak to individual Committee members*
- *The Committee will not listen to representations or talk to the applicant, objectors or public during the course of the site visit except in exceptional circumstances*

What are exceptional circumstances?

Only in exceptional circumstances will the Committee hear representations on a site visit from the applicant, objectors or public, for example: -

- *Where there is a considerable number of objectors or interested parties who would be unable to attend the meeting of the Planning and Regulatory Functions Committee at County Hall*
- *Where the application site is a significant distance from County Hall and many of interested parties would not be able to attend a meeting at County Hall*

It is not ideal for the Committee to try and listen to representations on a site visit. The visits are usually held outdoors and the weather may be a problem. It will be difficult for the Committee as a whole to be able to hear the representations being made

Usually in such circumstances consideration will be given to holding the meeting to determine the application at a local venue or having a meeting locally following the site visit at which representations can be heard from parties who would not be able to attend a meeting at County Hall

Anyone making representations to the Committee on a site visit will be permitted the same time to speak as those making representations at the meeting at County Hall – a maximum of three minutes

EXAMPLES OF PLANNING REASONS FOR REFUSAL

Examples of Planning Reasons for Refusal: -

Reasons for refusal must relate to planning considerations so applications can be refused where: -

1. Development is contrary to the Development Plan or Local Development Plan. So the development could be contrary to Structure Plan, Mineral Local Plan, Waste Local Plan or District Local Plan policies or any combination of these.
2. The use or development of the land is unacceptable for other reasons: -
 - highway safety/access concerns
 - noise and/or nuisance or other effect which could be detrimental to the amenity or existing and proposed use of land
 - harm/adverse effect on ANOB/SSSI/listed building or similar
 - contrary to AONB management plan
 - out of character/over development

Reasons which would not constitute 'planning' reasons for refusal may have a variety of consequences: -

1. Legal challenge by way of Judicial Review.
2. An appeal which could lead to an award of costs against the Council at a hearing or inquiry.
3. Complaint to the Council/Ombudsman.

Examples of matters which should **not** be used as reasons for refusal: -

1. Level of opposition to a proposal.
2. Effect on property value.
3. Loss of view from a house/private place.
4. Perceived prematurity of an application.
5. Concerns about developers motives.
6. Any other matter, planning or otherwise, which cannot be substantiated.

This list is not exhaustive and the view of the Planning Officer or Legal Officer should be sought before a refusal contrary to Officer advice.