

## **COUNCILLOR NEW OXFORDSHIRE CODE OF CONDUCT REFRESHER TRAINING**

Notes to accompany Slidedeck (NB: Not every slide has notes)

Acknowledgement – Most of the examples have been taken from news articles on Google and are my precis of those articles but I haven't set out the link)

### **Slide 2 - Overview**

A good overview of the subject is provided in Briefing Paper Number 05707, 14 September 2020 "Local government standards in England" by Mark Sandford  
<http://researchbriefings.files.parliament.uk/documents/SN05707/SN05707.pdf>

### **Slide 3 – Nolan Principles**

The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.

All Codes of Conduct must be underpinned by these principles.

#### **Selflessness**

Holders of public office should act solely in terms of the public interest. They must never use their position as members to improperly confer an advantage on, or to avoid a disadvantage for, themselves or to improperly confer an advantage or disadvantage on others.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships. Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest. Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

## **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias. In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

## **Accountability**

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

## **Openness**

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

## **Honesty**

Holders of public office should be truthful.

## **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs. Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

## **Slide 4 – Why do we need rules?**

See the Model Code of Conduct for a very clear exposition of the rules. The LGA Model Code accompanying guidance is also instructive and can be accessed here: <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>

## **Slides 5 & 6 When does the Code Apply?**

The law in relation to standards is set out in Chapter 7 of the Localism Act 2011. In particular, Section 27(2) states that "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority **when they are acting in that capacity**. [My emphasis]

It used to be the case in England that what you did in your private life could also be considered to be a breach of the Code until the Ken Livingstone case. It is accepted that this means that a councillor must be acting in an official capacity for the Code of Conduct to apply, but this of course depends on the particular circumstances and each case must be considered on its facts.

However, it is clear that councillors are not constantly 'on duty' and this principle was confirmed by the High Court in the case of Ken Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)

In that case, Ken Livingstone referred to a Jewish reporter as a "concentration camp guard" because he had been told to try to press him for a response. (Apparently, he did not know he was Jewish until he had made the comment). The challenge was on the basis that the Code did not extend to a situation where a Councillor was 'off duty'. The Judge commented that:

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

However, the High Court went on to say that a Councillor might be "performing his duties" as a Councillor even where he was not acting "in his official capacity", suggesting that this would be so where the Councillor was improperly using his position as a Councillor for personal advantage. **(This is the approach I take when deciding on conduct outside of the obvious such as on social media.)**

The judge went on to provide an alternative interpretation where a Councillor says:

*"don't you know who I am" to secure a favourable table at a restaurant is suggesting that he would use his position as a Councillor to penalise the restaurateur if a table were not made available, and so he can then hardly deny that he is acting as a Councillor in making that request."*

Given the advent of social media it is now also accepted, although it has never been tested in court, that if a councillor gives the impression that he is acting in an official capacity when making a post on social media, then the Code is likely to apply to that conduct.

However, the Committee for Standards in Public Life recommendation of a rebuttable presumption that your actions are carried out in your official capacity has been rejected by the Government. The Government said:

*"It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two".*

<https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards-in-public-life-report>

Out of interest, in the Model Codes in Wales and Northern Ireland, you can be caught by the Code in your private life if you do something which brings your office or the council into disrepute.

In Wales, the legislation has spelt out in clear terms what is covered by the Code. It extends unequivocally to conduct in private life in relevant circumstances. Section 52 of the Localism Act 2011 also omits reference to “in performing his duties” in Wales in relation to the undertaking to observe the Code which Members must sign.

### Case Studies - Social Media

**Stockport Councillor** called someone a sock puppet w\*\*\*\*r on her personal Twitter account, but the context was referring to council business so was caught by the Code

**Stroud District Councillor** referred to herself as @CllrX on her Twitter account and was caught by the Code you can read my determination in that difficult case [here](#).. There was no breach for reasons set out in that letter.

**Walsall Mayor** – did not breach the council's code of conduct, a local authority said. Walsall councillor Rose Martin was condemned for sharing the offending image on WhatsApp earlier. An independent review concluded she had not breached the councillor's code and would face no further action.

The decision sparked an outcry among opposition councillors who branded it "a huge slap in the face". Ms Martin had only recently been elected mayor when she was suspended by the Conservatives for six months. She was also required by the party to undertake diversity training as well as make an apology to the party board.

She had shared a picture showing five black children looking at a white child under the caption: "First day at school for a Ukrainian refugee in South London", although later claimed to have been hacked. The long-serving councillor, who said the link was sent through "unsolicited mail" which she had tried to delete, said her daughter first made her aware of it – and it has been reported to the police”.

I haven't seen the report but it seems here that the Mayor (who was elderly and admitted that she was not au fait with social media) may well have unwittingly posted something sent to her WhatsApp account. This serves to demonstrate that whilst one can't help what is received on an unsolicited basis, consequences can ensue when / if that is then published onwards!

**An East Riding councillor** – “who posted a tweet depicting a fake image of Jeremy Corbyn holding a Remembrance Day wreath at the scene of a terror attack in Liverpool

breached the authority's code of conduct. The tweet and further posts both on Twitter and Facebook were made by Councillor Paul Nickerson last November."

The investigation found that Cllr Nickerson breached two specific sections of the code of conduct - respect and not to act in a way which brings either an individual politician and the council itself into disrepute. This was because his posts "*can be considered to be **offensive and amount to personal abuse***". [My emphasis]

On the issue of disrepute, the report adds: "This particular case concerns postings on a social media forum. The significant volume of complaints received suggest that it was widely circulated on social media. *"The comments and concerns raised within the complaints also support the view that the nature of the (original) post was capable of being deeply offensive to any reasonable person and particularly those directly affected by events on 15 November 2021 or indeed the wider concept of Remembrance and the British Legion."*

In the realm of freedom of speech and the enhanced protection for political expression, there is a line which, if crossed, will result in a breach of the Code and potential sanction. In this case, the post was personal and libellous. Members need to be aware that this doesn't stop at the Code of Conduct. In this case, legal action was taken and the councillor was ordered to pay substantial damages which left him, in his words, "penniless".

#### Case Studies - Don't you know who I am?

##### **Gosport, Hampshire**

*"A new mayor and mayoress have been barred from all the pubs in their town following alcohol-fuelled celebrations just hours after they were sworn into their new roles. It is thought an argument broke out when staff asked the boozy party to leave.*

*As they were being removed Ms Carter allegedly threatened to get the pub closed down.*

*The group left and tried to enter the nearby Nelson's Bar but were refused and the mayoress reportedly made a similar threat to bouncers - and even asked **'do you know who I am?'***

*Stephen Brown, duty manager at Nelson's, said: 'She said to me "do you know who I am?'*

*'I said "no, I don't" and she said **"I'm the mayoress of Gosport I can have you closed down"**.*

**Clydach Town Council** - A Town Councillor trying to negotiate a discount for trophies for the local rugby club said “Don’t you know who I am” when the discount was refused. He was suspended for 6 months.

For interest, this was a case from the Public Services Ombudsman Wales Casebook in relation to disrepute which demonstrates that there must be a nexus between the conduct and the official role.

“Conversely, a complaint was received that Councillor J was intoxicated and behaving inappropriately at a street party. It was established that Councillor J did not have to undertake any action on behalf of the Council at the party. Therefore, in my view, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way the Code did not apply (except for paragraph 6(1)(a)). Whilst her behaviour may have been considered inappropriate by some it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute, so paragraph 6(1)(a) did not apply.”

### **Slide 9 – Respect**

- Respect means politeness and courtesy in behaviour, speech, and in the written word.
- Debate and having different views are all part of a healthy democracy.
- As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner.
- You should not, however, subject individuals, groups of people or organisations to personal attack.
- In your contact with the public, you should treat them politely and courteously.
- Rude and offensive behaviour lowers the public’s expectations and confidence in councillors.
- In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.
- This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority’s councillor officer protocol

### Case studies- Respect

Calver, R (on the **application** of) v The Adjudication Panel for Wales [2012] EWHC 1172

The Adjudication Panel of Wales upheld a finding of a standards committee about a councillor who was accused of failing to show respect and consideration for others by

posting online comments about other councillors and the way in which the Council was run. The member sought judicial review of this decision.

The High Court found that whilst the comments which were posted were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the councillors, the comments were “political expression”.

The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights. The Standards Committee’s decision to censure the member was therefore set aside.

**Renfrewshire Councillor** - Paul Mack, was disqualified for 17 months by the Standards Commission in Scotland for misconduct following a Hearing at which he was found to have behaved repeatedly in an unwarranted and offensive manner towards two other councillors, as well as to the Chief Executive and other officers.

The Panel heard that Councillor Mack had made a number of serious and unfounded allegations about the allocation of a council property to the family member of Councillor Devine. The allocation was the subject of a review by the Council’s Chief Auditor and then Audit Scotland, who concluded that the Council property was appropriately let and that there was no influence, or opportunity for influence, over the selection process, by any elected member.

Despite this, and without any evidence to the contrary, Councillor Mack had embarked upon a course of conduct in which he made accusations of corruption and cronyism, and of covering up criminal activity, towards Councillor Devine, the Chief Executive and senior council staff. Councillor Mack had further demanded the suspension of senior officers, again without any justification.

(The finding and sanction take into account that the Standards Commission had previously suspended Councillor Mack for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. Despite this, the Panel did not consider there was any evidence that he had made any attempt to moderate his behaviour or consider how it could impact others.)

**Carmarthenshire County Council** - Plaid Cymru Councillor Dorian Phillips heard saying 'f\*\*\*ing swallow that you f\*\*\*ers' during a virtual formal meeting when it was pointed out that the majority of decisions were made by Cabinet. He didn't realise



that his computer microphone was on. He claimed he was taking a business call during the meeting when he swore! He has referred himself to the Ombudsman

**Dudley Council** – The Leader has been referred to the standards committee after an investigation found he was "disrespectful" to a police chief.

In November 2021 Councillor Harley criticised the then borough commander for refusing to move on travellers who had stayed for longer than the permitted 28 days at the Budden Road transit site in Coseley. He said at the time the council had "lost all confidence" in Chief Supt. Madill. He accused her of letting her "political feelings" cloud her judgment and called for her to be reassigned away from Dudley. Kim Madill was Dudley's borough commander but has now moved on

West Midlands Police's complaint was upheld following an investigation by Daniel Stilitz QC, who said that while Mr Harley's remarks did not amount to bullying, they were "disrespectful, unwarranted and inappropriate". He concluded they gave rise to a breach of the code of conduct.

In his formal response, Mr Harley said he had "no regrets" about his comments and that he disagreed with the investigation's findings. He claimed Ch Supt Madill belonged to "the woke brigade" who "want to tear down the very fabric of our society" by supporting those "who seem hell-bent on trespassing and causing distress to law abiding citizens".

As stated above, there is a fine line between expressing legitimate political opinion and a breach for lack of respect. This another example of where personal attacks and questioning an officer's professionalism crossed that line.

**Swale** - Deputy Leader has been ordered to apologise for comments she made during a planning meeting. Cllr Monique Bonney (Ind, West Downs) made the remarks at a local plan panel. A standards sub-committee ruled that she had breached the members' code of conduct in terms of "always treating people with respect".

During a discussion on October 7 last year, Conservatives James Hunt and Mike Whiting complained that a consultation document was being "rushed through" by chairman Mike Baldock.

In response, Councillor Bonney said, "I mean, we've a duty to our local population to make sure we have a valid local plan which we currently have. And we have a duty to provide a new local plan. "If we don't, we leave ourselves extremely vulnerable and exposed. I wonder if that's what their end game is? Maybe their sponsors might like to tell us that?"



The two councillors took that to be a personal attack on them and said it suggested they had undeclared financial ties with other businesses. Cllr Bonney maintained it referred only to her concerns about donations to political parties when they were in power.

**Tameside** – The Monitoring Officer found that the Leader did not breach the code of conduct when she said a controversial garden village scheme would be ‘rammed down’ the throat of opponents.

At a full council meeting on Tuesday night, Labour leader Brenda Warrington hit back at the ‘Brenda the Bulldozer’ nickname given to her by the opposition over the Godley Green project. The scheme, which has been submitted for planning approval by the authority, would see 2,150 homes as well as local centres, retail and commercial sites developed on green belt land in Hyde.

During the budget meeting Councillor Warrington said: “Godley Green, I make no mistake, I will be on that first bulldozer and that is a promise. “I will be on that bulldozer that actually starts to dig up ready to build houses on Godley Green and believe me it will be rammed down your throat. It really will.”

Following the meeting her comments outraged residents opposed to the garden village project, which has garnered more than 3,400 objections. A number of people subsequently submitted complaints to the council over Councillor Warrington’s use of language, arguing she had breached councillors’ code of conduct.

One resident’s complaint stated that her behaviour was ‘not befitting of a local councillor’ and during the meeting she had acted in an ‘insensitive and damaging way’.

Sandra Stewart, Tameside’s Head of Governance ruled there is no case to answer. “Councillors should be able to express their opinions and concerns in forceful terms,” the code is not intended to stifle the expressions of passion and frustration that often accompany discussions about local authority business”.

### **Slide 11 Bullying, Harassment and Discrimination**

The Best Practice Recommendations issued by the Committee for Standards in Public Life required councils to include definitions of bullying and harassment in their Code and these are now encapsulated in the new Code.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as: *offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on*

*social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.”*

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person. Unlawful discrimination is where someone is treated unfairly because of a protected characteristic.

Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race, religion or belief
- Sex and sexual orientation

The Equality Act 2010 places specific duties on local authorities, namely the Public Sector Equality Duty.

Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### Case Studies

#### **Bullying, Harassment and Equalities**

The High Court in the case of *Heesom* ([2014] EWHC 1504 (Admin)) found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

The alleged incidents occurred over a period of two years. During that time the member had made threatening comments to officers of both junior and senior grades. For example, comments such as, a number of managers of the Council had been dispensed with and “*there were more to go*” and “You won’t like the man I’ll become if

I don't get what I want.... I don't need to *threaten you you're an intelligent woman I know you're listening to me*".

The member was disqualified from office for 2 years and 6 months, he appealed the decision and the matter was referred to the High Court where all but three breaches were upheld and the sanction was reduced to disqualification for 18 months,

**Sawbridgeworth Mayor** - Greg Rattey was accused of being racist. Cllr Rattey, who is a Sawbridgeworth town councillor has been a campaigner for gay and human rights for several years.

He was accused of breaching the councillors' code of conduct by admitting on social media app 'Nextdoor' that he had once belonged to "an intrinsically racist organisation" although he now regretted this.

The complainant further criticised Mr Rattey for posting that "the most homophobic people [he] had met were black men" and that the comment was "intrinsically racist/inflammatory in nature and likely to stir bad feeling towards black men".

It was alleged that the post was in breach of the code of conduct of both the district and town councils.

In his decision, the Monitoring Officer highlighted the exact wording as: "Interesting that the most homophobic people I have encountered in my life have been black men. You'd think they'd be the opposite given the prejudice they have experienced." He stated that although the post was not clearly directed at the complainant, he believed he must consider whether what was said was racist in the first place, but he ruled that although he could see how "such a post could be misconstrued, the precise words... do not in my estimation amount to a racist comment".

He added: "The words 'I have encountered in my life' make it clear that you are talking of your own life experiences as a gay man; it is not a broad brush characterisation that all black men are homophobic, only that of all the homophobic people you have met a majority fell into that particular demographic." Mr Ellis continued: "You reinforce this in your written response to the allegation... when you said 'I do not believe all black men are homophobic'. "This being so, I do not consider there to have been any breach of the code of conduct and do not consider that the matter should be referred for investigation."

### **Example – Public Services Ombudsman Wales Casebook**

A member of a town council wrote to a Deputy Minister of the Welsh Assembly Government about an employee ("Mr Smith") of a county council, a letter which was also copied to the Council. In the letter the member questioned Mr Smith's

competence and motivation and he made a number of comments of a disparaging and personal nature about Mr Smith and his associates.

He raised the issue of homosexuality and referred to it as a “*notorious disability*” and that “*homosexuality is only a demon which can be driven out*”.

The member was referred to the Adjudication Panel for Wales. The Panel found that the member had breached the Code in that he had failed to show respect and consideration for others. It also found that by his use of words he had brought the office of member into disrepute.

The member was disqualified for 12 months from being or becoming a member of a local authority.

### Example – Public Services Ombudsman Wales Casebook

A former Monmouthshire County Councillor was suspended for two months for describing homosexuality as “*unnatural, perverted, immoral and wrong*”. Former Monmouthshire county councillor Graham Down also made a comparison between homosexuality and paedophilia, according to the Adjudication Panel. Mr Down said the comments, sent in emails were “private” but they were sent to the authority’s Chief Executive.

The Adjudication Panel determined the code of conduct had been broken - and suspended Cllr Down for two months.

### Example – Public Services Ombudsman Wales Casebook

A member of a county council was a member of the Council’s Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room Councillor A said “good candidate, shame he’s black”.

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that Councillor A had brought the office of member and his authority into disrepute (in breach of paragraph 6(1)(a) of the Code).

**Gwynedd councillor** - has been found guilty of four code of conduct breaches following allegations of “bullying behaviour” and “sexist comments” towards a former town council clerk.

Cllr Mike Stevens, resigned as a town councillor before the hearing after blaming increasing commitments elsewhere, but Gwynedd’s Standards Committee heard evidence from the Public Service Ombudsman for Wales’ office amid allegations relating to a string of emails to the then clerk of Tywyn Town Council.

Katrin Shaw, representing the Public Service Ombudsman for Wales' office, described "a pattern of behaviour," adding that Mr Stevens had referred to the clerk's "inflated ego, her dictatorial attitude, and that she has a massively inflated opinion of herself."

She added: "There are gendered comments in there that she's a fantasist and misandrist, that she is a novice in her job – you will see a few references there that the ombudsman considered crossed the line and were attempting to undermine and bully the clerk in her position."

Ms Shaw referred to further emails during 2019 and 2020 including comments referring to the then-clerk's "petulant nature," calling her "an overbearing schoolmistress" and "was slowly emasculating the council."

Having interviewed several witnesses and town councillors, she added: "the vast majority of members of the council considered the correspondence from Cllr Stevens to the clerk was unreasonable, that it was harassing, belittling, borderline misogynistic, disrespectful." However, one female member of the council also stated that Cllr Stevens had always been courteous to her and had never felt intimidated and bullied by him, while another member felt that Cllr Stevens' emails were "speaking the truth," albeit robustly.

Cllr Stevens, who did not attend the hearing, claimed the clerk "had acted beyond her authority" and her behaviour had been "intimidating and overly robust" and had "no respect towards him."

But Ms Shaw, summing up, concluded: "There is a pattern of behaviour demonstrated towards the clerk, in her witness statement she refers to the fact that she was unwell and had to take time away from the office because of these events. "She talks about the impact the behaviour has had on her.... (having) never experienced anything of this nature before in her working life.

"As far as the ombudsman is concerned the pattern of sexist comments, in my view, the reference to the clerk's gender, her attitude, beliefs are peppered through those emails. "There is evidence of bullying behaviour towards the clerk and those breaches are very serious."

Cllr Stevens had breached the following:

- 4(a) (You must) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- 4(b) show respect and consideration for others;
- 4(c) not use bullying behaviour and harass any person

6(1)(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Cllr Stevens had tendered his resignation as a member of Tywyn Town Council on December 4, otherwise he would have been handed a lengthy suspension.

**Cambridgeshire** - An independent investigation has concluded Cambridgeshire County Council's former deputy leader Roger Hickford breached the Council's Code of Conduct in six different areas - including bullying, improper use of his position and bringing the council into disrepute.

The report by Wilkin Chapman solicitors considered that Roger Hickford was acting in his official capacity when dealing with officers in respect of a tenancy at Manor Farm, Girton.

The full list of breaches are

**Respect** – he failed to treat Officers and others acting on behalf of the council with respect

**Bullying** – he used a bullying manner in order for the council to pay for works that would otherwise be the responsibility of the tenant. He also used a bullying manner in order to set the terms of the lease for Manor Farm

**Impartiality** – he compromised officers and others' impartiality in his dealings with regard to Manor Farm

**Disrepute** – his conduct towards officers and others and his conflict of interest would have reduced the public's confidence in him being able to fulfil his role or the council being able to discharge its functions

**Improper use of position** – he used his position as deputy leader to receive concessions that the council would not otherwise have agreed to

**Interests** - he failed to register a disclosable pecuniary interest (the tenancy of Manor Farm) within 28 days and he failed to declare a non-statutory disclosable interest in meetings with regard to County Farms matters.

### **Slides 12 & 13 – Impartiality of Officers**

#### Case Study - Sandwell Borough Council

A former deputy council leader has been found to have breached its code of conduct by trying to cancel parking tickets for family members.

The Sandwell Council misconduct hearing found Mahboob Hussain also broke rules in a sale of public toilets.

It said the councillor "ignored" a £130,000 valuation and instead sold them for £35,000 to a family friend.

The committee, headed by James Goudie QC, found the councillor had breached the code of conduct a total of 12 times.

In his summary after the three-day hearing, Mr Goudie said: "[Mr Hussain] comprised the integrity of other council officers by exercising complete control over the action of the sale of the toilet block.

"The councillor's actions brought the council into disrepute."

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

This case has been mired in controversy with various reviews, reports and legal action, but the outcome of the Code findings have not been set aside

### **Slides 14 & 15 Confidentiality and Access to Information**

At common law, councillors have to demonstrate a need to know, there is no 'roving brief'.

In ***R v Birmingham City District Council, ex p. O*** [1983] 1 A.C. 578 the (then) House of Lords considered the question of access / right to information in an adoption case.

During the course of investigations into housing problems being suffered by prospective adoptive parents, a city councillor on the housing committee, but not a member of any social services committee, became concerned at the suitability of the prospective parents for the adoption. She asked to see the files compiled by the social services department and the prospective parents sought an order restraining disclosure, after the city council had indicated that it intended to provide the councillor with the material she sought. The Divisional Court refused the application, but the Court of Appeal allowed the parents' appeal.

The Lords allowed the council's appeal taking the view that the real dispute was between the council itself and the social workers it employed. In the present case, notwithstanding that the actual decision on the adoption might have been made by a committee, if anything went wrong, it would be the council as a whole which was responsible. While a councillor was accordingly entitled to see any information possessed by the council which related to a committee of which she was a member,



if she had a good reason for seeing that material, which in most cases she would, being a member of the appropriate committee; such a right of access to material did not, however, extend to areas which were not within the councillor's direct responsibility, and which were covered by committees of which she was not a member.

In those cases the councillor had to show a "need to know": if she did establish a need, then she was entitled to the information. On the facts in this case it could not be said that the councillor had failed to make out a genuine concern and need to have made available the information she sought.

In ***R v Sheffield City Council Ex parte Chadwick*** (1985) 84 LGR 563, the Divisional Court (Woolf J as he then was) took the view that it is not lawful for a council, by allowing a sub-committee to be used for party political purposes, to justify a need for confidentiality and secrecy which would not otherwise arise.

However, (subject to political balance rules) it is not prima facie unlawful for a majority party to exclude members of other parties from committees. If an excluded councillor reasonably requests information about committee meetings, the committee must provide that information, and if the most convenient way of supplying that information is by allowing him to attend the meeting, then he must be allowed to attend.

The position is of course different now with the need for political balance in committees and sub-committees arising out of the changes in [s.15](#) and [Schedule 15](#) of the [Local Government and Housing Act 1989](#) and generally, councillors are not treated as members of the public for confidential items.

In ***R v Hackney LBC Ex parte Gamper*** [1985] 1 W.L.R. 1229, (Lloyd J as he then was) considered the case of G, the applicant, who was a Liberal councillor in the London Borough of Hackney, which had a large Labour majority. G was a member of both the public services committee and the housing sub-committee. The council was required by law to put its maintenance and construction work out to tender and to run its direct labour organisations as a business. In this respect the public services committee appointed two sub-committees. G was concerned about empty flats and inadequate repair services and sought access to meetings and agendas of the sub-committees but was refused on the ground that they were confidential.

G sought judicial review and the court held, in granting the application, that G needed access as a councillor, as a member of the housing sub-committee and of the public services committee in order to ensure that those committees were doing their work efficiently, in order to carry out his duties as a councillor. Furthermore, no reasonable council could properly have reached the decision to refuse such access, and the council's decisions would be quashed.

(See Sandwell case referred to above)

**Orkney Islands** – Councillor John Ross Scott, was suspended by the Standards Commission Scotland from attending meetings of the full Council for three months.

A Hearing Panel of the Standards Commission found that, in two Facebook posts published in March 2020, Councillor Scott disclosed sensitive information about the Council's response to the coronavirus pandemic. This was despite the information having been provided by officers to elected members at private briefings.

Having heard from a number of witnesses, including other councillors, the Panel was satisfied that it was evident to all that information provided at the briefings was to remain confidential until officers had time to prepare its public communications.

**Fife** - Councillor Andy Heer, was suspended by the Standards Commission Scotland from attending all meetings of Fife Council, and all meetings of any other body on which he is a representative or nominee of the council, for January and February 2021.

A Hearing Panel of the Standards Commission found that Councillor Heer, who was a Council appointee to the Board of Fife Resource Solutions (FRS) disclosed, firstly, on a Fife Conservative press release and later, on Facebook, information concerning the reopening of recycling centres following the first lockdown that had been discussed in the papers for, and at, a special meeting of the FRS Board on 20 May 2020.

This was despite knowing the information was to remain confidential until such a time as the Council had agreed to the proposals, that full arrangements for their implementation had been put in place, and for communications to be managed accordingly

### **Slide 16 & 17 Disrepute**

**Stroud District Council** – See above – See also Cambridgeshire case above.

**York** councillor is being investigated for a potential breach of the council's code of conduct after he said he would "go to hell in a handcart" before approving a planning application on green belt land.

Tony Fisher, chair of the planning committee, made the comment after abstaining on a vote to approve a plan for 83 homes in Dunnington.

Labour have called for Cllr Fisher's resignation from the post of chair, claiming that his comments could be seen as predetermining his view on future applications.

Liberal Democrat Cllr Fisher later said he had voted previously for green belt applications – a matter of public record – and said he “may not have stated exactly what [he] intended to do” due to the side-effects of medication.

A cross-party group of councillors earlier this month decided a complaint submitted about the comments “met the requirements of the assessment criteria for complaints and that the public interest would be served by referring the complaint for investigation”.

**Perth and Kinross** - Councillor has been cleared by a watchdog of an alleged breach of the councillor’s code of conduct. Councillor Lewis Simpson was accused of breaching the code by suggesting to a constituent that elected representatives other than himself could be “persuaded” to ask probing questions at a planning meeting concerning the controversial Cross Tay Link Road.

The Strathmore councillor was said to have used the term “persuaded” in an email sent to the constituent on October 16, 2020 - a day before the local authority’s planning committee was scheduled to consider an application for the formation of the link road.

However a panel set up to examine the complaint has since determined councillor Simpson’s use of the word “persuaded” was not a suggestion his colleagues could be pressured or influenced into forming a particular opinion about an application as had been claimed. The panel noted in reaching its conclusion it may have been helpful for councillor Simpson to have explained in his email that any committee member approached to ask a question at the meeting would have to be careful not to pre-judge or be seen to be pre-judging the matter.

### **Case Studies – Public Services Ombudsman for Wales Casebook**

A member of a county borough council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10-year-old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published, she telephoned the councillor who she said was abusive towards her during the call.

In a subsequent e-mail exchange, the councillor told her that she had “failed to take any responsibility for her child allowing him out alone”, that her “ill-educated in the highway code son” was to blame and said, “don’t you dare try and shift your inadequacies as a parent upon me”. He was suspended for 12 months in respect of these breaches.

**Air show Slap Councillor** – A standards committee recommended that a councillor who slapped a man outside Clacton Pier at last year’s Air show was removed from Committees

**Bodmin Town** – Councillor censured for alleging that “sadly democracy can be bought”. Councillor Andy Coppin was found guilty of breaching the Code of Conduct for the Council in May after he took to Facebook to comment on the local elections.

The former mayor shared his thoughts in a post on his personal page, saying “sadly democracy can be bought” and “however, I will say that someone tried to influence my vote. I can’t prove it so I won’t say any more...”

The monitoring officer concluded that Cllr Coppin breached the code on the grounds that his conduct could "reasonably be regarded as bringing the office or the council into disrepute"

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A former Leader of **Swansea Council** was banned from becoming a councillor for two-and-a-half years after indecent images were found on his computers. Lawrence Bailey was also found to have breached the Code by writing to a local newspaper using false names.

Three separate computers used by Mr Bailey held indecent images. Council engineers discovered 6,000 adult images on one laptop's hard-drive. It was replaced, but in 2005 several thousand more pornographic items were discovered on the same machine. Another computer used by Mr Bailey was discovered to hold at least 70,000 graphic images, of which half were described as "adult hard-core pornography". The third computer, also a laptop machine, also held indecent pictures.

But the panel also found it contained 253 documents, mostly letters to the Swansea Evening Post.

"Although the police examination showed Mr Bailey as being the author, the documents purported to have originated from various residents of Swansea," stated the report. "In some cases, the addresses did not exist, or the postcodes did not match them, or the true residents had no knowledge of the letters."

In his own submission to the panel, Mr Bailey claimed that writing letters to the press under pseudonyms "was widespread practice in political life in Wales".

Publishing its decision, the adjudication panel accepted that Mr Bailey himself admitted misusing computer equipment supplied by the council and had brought the office of councillor into disrepute.

But banning him from standing as a councillor anywhere in Wales for two-and-a-half years, the panel noted a series of what it described as "aggravating features".

These included the persistent downloading of images over five years, failure to heed advice given on two occasions about his conduct, and the "serious undermining of public confidence" by his actions.

**Vale of Glamorgan** – A councillor who started coffee shop and wine bar without planning permission has been found to be in "serious breach" of code of conduct.

Cllr Leighton Rowlands, who has been a member of the planning committee since 2017, was suspended for a month for what the standards committee called a "serious breach" of the code of conduct that brought the council and town council into disrepute.

The councillor and a business partner opened the coffee shop and wine bar named The Watering Hole in June 2019. The building was previously a shop and therefore a change of use planning application was required for the building to be used as a cafe.

Cllr Rowlands applied for planning permission but decided to open the establishment before the council decided on the case. At a Standards Committee meeting held late last month (January 26), the councillor said he had limited knowledge of planning law when asked to explain his decision.

He told the committee: "Like most new councillors who sit on the planning committee we have training but they are always a whistle stop tour [...] and I would say I had difficulty in understanding the planning law like any member of the public would, even with the training."

He added that he had "limited or confused knowledge of planning".

In addition, he told the committee that he had not known about the breach before opening. He said: "Planning and licensing rules are very complicated. I'm not a solicitor; I'm not a Planning Officer, and when I did ask for advice from the planning officer, it was very grey. In hindsight, I should have asked the monitoring officer for more advice - I don't know why I did that."

Once the Monitoring Officer raised the issues concerning the planning breach with Cllr Rowlands, the councillor quickly moved to close the business down. Although he was unsuccessful in shuttering the business, he eventually resigned, withdrew the planning application and took no further part in the business and planning process. As a result, he also lost his investment in the company.

The standards committee was satisfied that he was aware of the consequences of opening the cafe before a change of use planning permission was implemented and the potential breach of planning control.

Mrs Cook later added: "The Ombudsman concluded that Cllr Rowlands' conduct in failing to consider his situation appropriately or seek advice about his role or position in advance of the decision to open the establishment suggested a significant lack of judgment and had the potential to impact on the mutual relationship of trust that exists between the council, the town council, its elected members, and members of the public.

"The Ombudsman determined that the evidence supports a finding that Cllr Rowlands' actions brought his office as a councillor and the council into disrepute and are suggestive of a breach of paragraph 6 1 a of the Code of Conduct."

Cllr Rowlands accepted that he breached the code of conduct and said that he was "naive" in doing so.

Richard Hendicott, chair of the Standards Committee, said: "The standards committee is of the view that this is a serious breach, especially of a councillor who is on planning. It brought the council and indeed the town council into disrepute. It's certainly not a case where no action should be taken".

He added: "This was a single incident. Once you knew about it or once you knew the significance or the seriousness of it, Cllr Rowlands, you took steps to try and extricate yourself from the position. But you, being on planning, you have a duty to uphold the high standards which are expected of you. In the circumstances, we think a suspension is appropriate and we are going to suspend you for one month."

### **Slides 17 & 18 – Use of Position**

**Caerphilly County Borough Council** - Councillor David Poole. The allegations were that the Respondent had breached Caerphilly County Borough Council's Code of Conduct in that he used his position to secure an advantage by deciding to buy shares in a company, IQE plc, on the basis of confidential information he had received as a result of his position. On October 8, 2018, Cllr Poole attended a cabinet meeting of the Cardiff Capital Region where he received confidential information about the level of profitability and productivity of IQE, following the use of public money to buy the site which would be leased back to IQE. Contained in the confidential report for the CCR was an assessment that productivity was "significantly exceeding plan" and that a tipping point would be reached where the company would be profitable.

The Adjudication Panel for Wales felt that it was noteworthy that Cllr Poole considered the purchase "unwise" because he was conflicted over future decisions regarding IQE "rather than because he ought not to have benefited from the contents of the confidential information that was seen". The APW found that he brought the authority and his office as a member into disrepute.

He also failed to disclose a personal interest and/or withdraw from a meeting on 18

February 2019 when a matter in which he had a prejudicial interest was being discussed, namely financial dealings with that same company (alleged breaches of paragraphs 11 (1) and 14 (1) of the Code).

Councillor Poole was suspended for five months in total

## **Slide 19 – Use of Resources**

### Section 2 Local Government Act 1986

#### **2 Prohibition of political publicity.**

(1) A local authority shall not publish, or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;

(b) where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

(3) A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves.

### Code of Recommended Practice on Local Government Publicity

<https://www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity>

### Case Study Misuse of Council Facilities

**Aberdeenshire Council** - The Standards Commission for Scotland suspended Councillor Alexander Duncan for breaches of the Councillors' Code of Conduct.

The Hearing Panel heard that Councillor Duncan, as a partner of a firm, submitted a planning application for a wind turbine, which had been considered by the Banff and Buchan Area Committee at a meeting on 16 August 2016 and was due to call again at a meeting on 6 September 2016.



The Hearing Panel found that Councillor Duncan sent two emails from his Council email address, which were signed off by him as a councillor, to seven members of the Committee on 4 August 2016 putting forward some points in favour of the planning application.

The Hearing Panel heard that the planning application was granted at the Committee meeting on 6 September 2016. The Hearing Panel found that Councillor Duncan had acted inappropriately in using his council facilities to send the email of 4 September 2016, having previously been expressly warned not to do so by the Council's Monitoring Officer.

In doing so, the Respondent had contravened the provision in the Code which states that Council facilities should only be used for carrying out Council duties or for incidental personal use authorised by the Council.

The Hearing Panel further found that members of the public would reasonably conclude that, in signing off his emails as a councillor, Councillor Duncan was using his position to seek preferential treatment and, in making representations, outside of the Committee forum and the correct procedure, in favour of the application was also seeking to privately lobby other councillors about the planning application.

“A failure to keep personal interests separate and distinct can result in Council decisions being legally challenged and can erode public confidence and trust in local government and the democratic process itself.” The Hearing Panel suspended Councillor Duncan from all committee and sub-committees of the Council that make decisions on quasi - judicial or regulatory matters (such as planning), for a period of 6 months.

### **Slides 21 & 22 Interests Generally**

See - Openness and transparency on personal interests - A guide for councillors  
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>

### **Slides 23 – 31 Disclosable Pecuniary Interests**

A person's disclosable pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).

The Government's view was that there should be more focus on what really matters in terms of potential corruption and abuse of position and took the view that less serious

issues should be dealt with locally and that sanctions would be applied at the ballot box.

To give this 'teeth', breach of these provisions is a criminal offence, but there has only ever been one prosecution to date. CSPL has recommended abolition of the offence but the Government disagreed.

**Dorset County Council** – Former Leader found guilty of an offence under the pecuniary provisions of section 31 of the LA 2011 (that is having a disclosable pecuniary interest in a matter considered at a meeting).

On 25 February 2013 he was present at a meeting about the East Dorset Core Strategy and, despite having a disclosable pecuniary interest in a matter that was considered at that meeting and without reasonable excuse, he participated in the vote taken at the meeting.

At that time, he was a non-executive director of a housing charity and although he was not in receipt of a salary, he had received various remuneration payments for the years 2010 to 2013 totaling some £29,920. In accordance with section 30 of the LA 2011, he had listed that interest in pecuniary interest forms submitted to the district council and the County Council in 2012.

The district judge concluded that before the meeting the defendant member should have taken time to consider his position. The Localism Act 2011 was clear that, having declared his interest as a non-executive director of the housing charity, he could not take part in that meeting. As the district judge pointed out, the defendant member could have done one of two things.

He could have obtained a dispensation from section 31(4) by virtue of section 33 of the Act.

Secondly, it would not have unreasonable for the defendant member to have consulted with the Monitoring Officer to obtain his advice on the issue, particularly given that the onus is on the local authority member to deal with such matters.

On the evidence, the district judge found that the defendant was prevented from taking part in the meeting on the 25 February 2013 and, without a dispensation, he could not take part.

Section 31(4) of the Act imposed a positive duty on him not to participate and vote. Although there was no evidence before the court, that the defendant member's participation in the meeting resulted in any direct benefit to him, the provisions of the Act made it clear that he should not have taken part or voted at that meeting.

The district judge indicated that the defendant member had failed to satisfy the court that what he did amounted to a reasonable excuse. He was therefore given a six-month conditional discharge and was ordered to pay £930 in costs (the lowest penalty that the court could impose); he has been allowed to remain an elected member.

Just because you don't have a direct financial interest in matter, the decision could still be set aside on the basis of apparent bias...

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

The High Court quashed a planning permission decision on the grounds that participation in the decision making by a company director of a housing association gave rise to an appearance of apparent bias.

The claimant challenged the grant of outline planning permission by Wiltshire Council for a scheme of up to 35 custom built residential dwellings, including nine affordable homes. HPH Ltd and HAB Housing were the applicants for planning permission. HPH had entered into discussions with Selwood Housing Association (SW) in 2011, regarding the provision of affordable and custom-built housing as part of a future affordable housing development project, with SW providing free advice to HPH. It was intended that the affordable housing aspect of the development would go out to tender once outline planning permission had been granted.

In June 2014, the planning committee discussed and approved the HAB/HPH application for planning permission. There were however a number of objections to a particular councillor taking part in the decision (Councillor M) on the grounds that he was a director of SW and therefore had an interest in the outcome of the application.

The High Court allowed the judicial review application and quashed the planning permission decision, holding that:

Councillor M did not have a direct pecuniary or proprietary interest in the planning application. The decision to grant HAB and HRH planning permission did not directly lead to Councillor M obtaining any benefit and SW was not a party to the decision in any case.

SW did not have a contract with HPH or HAB which meant that Councillor M would have stood to directly benefit from the grant of planning permission and therefore was not disqualified under section 31 of the Localism Act 2011. It could be said that SW had built up goodwill towards HPH and HAB by giving affordable housing advice to them but at the time permission was granted the affordable housing element of the scheme had not yet gone up for tender.

Councillor M's involvement in the decision to grant planning permission did give rise to an allegation of apparent bias. It was in both SW and Councillor M's interests for the application to be approved and it was clear that a lot of effort had been put into the work with HAB and HPH making SW "the front runner to deliver the affordable housing part of the scheme" who would "barring something unforeseen, be appointed to do so in due course".

This finding would not necessarily preclude Councillor M from participating in future planning committee meetings, it was simply the case that here SW was not just any affordable housing provider but was instead the only provider which had expressed a keen interest in the scheme, had advised those applying for planning permission and had been named by HAB and HPH as a potential partner going forward.

SW was in a superior position compared to other affordable housing providers in relation to the planning permission application which meant that because of apparent bias, Councillor M should not have participated in the meeting.

### **Slide 32 –Participation where you have a DPI**

#### Case Study Cllr Kevin O'Neill Merthyr Tydfil BC

Cllr O'Neill had a personal interest in a matter affecting St David's, Luther Lane, Merthyr Tydfil, a property neighbouring his home which was purchased by a private organisation with the intention of housing children from troubled backgrounds in a community setting. There had been a lot of opposition to the plans locally and on social media. Councillor O'Neill was present at two meetings to discuss the Luther Lane property on 15th August 2018, the first a pre-meeting with Council staff, the second an inter-agency meeting having been advised not to by the Monitoring Officer.

Cllr O'Neill was suspended for 7 months for six breaches of the Code The six alleged failures under consideration were as follows.

**Allegation 1** Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15th August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.

**Allegation 2** Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15th August 2018.

Allegation 3 Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15th August 2018.

Allegation 4 That the Respondent's email to the Director of Social Services on 16th August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the email sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.

Allegation 5 Whether the Respondent's actions in speaking at the meeting of the 15th August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16th August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.

Allegation 6 Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5th March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.

**South Belfast** – former councillor has been censured by a standards watchdog for failing to declare his property interests.

Declan Boyle did not declare his personal interests during council meetings that discussed improvements in areas where he has interests in 31 HMO properties, the Local Government Commissioner for Standards found. It follows a lengthy probe into complaints that the landlord, who manages dozens of student lets in the Holylands area, had failed to comply with the councillors' code of conduct. They included concerns in 2016 that Mr Boyle had not declared his interests when chairing a council committee that approved an £80,000 grant for the Holylands.

### **Slides 35 – 39 - Non Registrable Personal Interests**

Standards Boards – *“Wellbeing” can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position. The range of personal **interests** is, accordingly, likely to be very broad.*

**Antrim and Newtownabbey Borough Council** - A former Northern Ireland councillor has been censured by a government watchdog, despite him no longer being an elected representative. An investigation was launched by the Local Government

Commissioner for Standards (LGCS) into the conduct of former Ulster Unionist councillor Mervyn Rea in October 2016 .

The probe followed a complaint from a member of the public about Mr Rea's attendance at a meeting of Antrim and Newtownabbey Borough Council's Planning Committee. Mr Rea, who was not a member of the committee, spoke in support of an application for planning permission for a pig farm in Newtownabbey. Mr Rea was involved in the pig industry and could have benefitted from the decision.

The Commissioner Marie Anderson found that, on the balance of probabilities, the then-councillor had an "indirect" financial interest in the planning application, which he did not declare prior to the meeting.

Mervyn Rea lost his council seat in May's local government elections.

"The commissioner also stated that having registered any interests, councillors have an ongoing obligation to disclose and declare their pecuniary and non - pecuniary interests. Failure to do this could be regarded as a serious matter which may result in a sanction of disqualification.

"On a more general point, the commissioner stressed the importance of councillors engaging and cooperating with both the investigation and adjudication processes. In this case Mr Rea, assisted by his legal representatives, was given credit for the regard he showed for the standards regime.

"Ms Anderson stated that co-operation from councillors is of mutual benefit and invariably leads to savings to the public purse."

**Caerphilly CBC** - case of Cllr Poole who took part in a meeting to discuss financial dealings with a company in which he owned shares (Not enough to be a DPI because the business was not in the council area)

**St Donats Community Council** – The Ombudsman received a complaint that a member of St Donats Community Council had breached the Code of Conduct.

It was alleged that the member failed to declare a personal and prejudicial interest when she sat on the interview panel during an interview for the role of co-opted member of the community council.

The Ombudsman found that the member had a personal interest in the interview by virtue of her relationship with the applicant's estranged brother and that there was tension between them.

It was the Ombudsman's view that a member of the public, with knowledge of the circumstances, would regard the member's interest as so significant as to prejudice her judgement of the public interest.

The investigation established that the member was advised by the Clerk that she was not required to declare an interest in the interview.

**Whilst a decision to declare an interest is the responsibility of each individual member, it was not unreasonable for the member to have acted upon the Clerk's advice.** The investigation considered whether the member's failure to declare a personal and prejudicial interest caused any harm and whether it affected the decision to appoint to the role of co-opted member.

There was no documentary evidence or written record of the interviews. Therefore, the Ombudsman's decision was guided by the fact that the decision to appoint the successful applicant was taken unanimously by the Interview Panel. On the basis of the information available it was not considered that the applicant's application was adversely affected by the member's presence and involvement in the interview process.

In view of these factors it was concluded that the Ombudsman did not need to take further action in the public interest. However, he recommended to the Clerk of the Council that training on members interests and their obligations under the Code of Conduct is provided to the Council.

This is an example of the principle that only a councillor can know whether they have an interest and the fact that advice is given is mitigation not exoneration. We had a similar case in Swansea where the then Monitoring Officer advised a councillor that she did not have an interest when she sat on a panel to appoint a local authority governor to a school in which her husband was a candidate!

**Fife** - Councillor suspended for two months for breaching the code of conduct for councillors.

The Standards Commission panel took action after Linda Holt failed to register an interest when in a decision-making role at a planning committee. The councillor was formerly part of an anti-windfarm campaign group, Scotland Against Spin (SAS), but did not mention this when voting against a renewal for a wind turbine.

At the hearing in Glenrothes last week, Cllr Holt accepted that she had failed to both declare the interest and had moved to reject the application at the planning meeting in May 2018.



Tricia Stewart, who chaired the panel, said: “The need to register and declare certain interests is a very important part of the Councillors’ Code of Conduct as it gives the public confidence that planning decisions are being made entirely on merit and are not influenced by any councillor’s own interest in the matter.

“Registering and declaring interests provides transparency and helps maintain the public’s confidence that a councillor’s personal interests will not influence their discussions and decision-making. The public must have confidence that councillors are considering any planning application objectively, on its individual merits.

“The panel considered that not only should Cllr Holt have registered her interest in SAS, she should also have declared it at the planning meeting and should have taken no part in the discussion and voting on the planning application in question.”

**FORMER Inverclyde provost** - Ciano Rebecchi has been found guilty of breaching five elements of the Councillors' Code of Conduct after he voted in favour of a planning application submitted by 'close friends'.

Councillor Rebecchi was censured by a Standards Commission Scotland panel which ruled he should have declared an interest and took no part in the decision.

Lindsey Gallanders, chair of the three-person panel, said: "It is the personal responsibility of councillors to be aware of, and comply with, the provisions in the Code."

Cllr Rebecchi failed to abstain from a planning board vote on an application for a roof timber enclosure at a factory in Gourock which was submitted by a family he has ties to.

The panel decided he had not met the 'objective test' as to whether a member of the public would reasonably regard the interest as significant enough to prejudice his decision-making as an elected member.

Other breaches of the Code by Cllr Rebecchi included not declaring that his friends who had submitted the planning application had a financial interest in its outcome.

### **Slides 45 & 46 – Gifts and Hospitality**

The former deputy leader of Westminster city council stepped down after it was revealed he had received nearly 900 gifts and hospitality packages over six years