



East Cambridgeshire
District Council

THE ECDC CODE OF CONDUCT

Guide

September 2012

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SECTION 1

Introduction

This guide is from the Monitoring Officer of East Cambridgeshire District Council ('ECDC') and provides an overview of the ECDC Code of Conduct ('the Code') adopted by East Cambridgeshire on 26 July 2012 for District Councillors and also for any Town or Parish Councillors whose Council has adopted this version of the Code. This takes in to account previous Standards for England guidance/ cases law or decisions where these would still be relevant in terms of interpretation of any paragraphs within the Code and the Department for Communities and Local Government guide "Openness and transparency on personal interests A guide for councillors"¹ ('DCLG guidance'). This is to provide a general understanding of the provisions. It is meant to assist Councillors and Officers (including Clerks) interpret the Code, although some of the areas, for example, in relation to interpretation of DPLs, may still be a matter of legal challenge and interpretation as/ when/ if any cases are taken and decided in Court. This guide will, however, be reviewed and updated as necessary to reflect any further Central Government guidance or case law.

The Seven Principles

Under section 28 of the Localism Act 2011 (the 'Act'), relevant local authorities (which include District and Town/ Parish Councils) must adopt a Code, which is consistent with these seven principles:

- ❑ selflessness;
- ❑ integrity;
- ❑ objectivity;
- ❑ accountability;
- ❑ openness;
- ❑ honesty; and
- ❑ leadership.

These principles underpin the Code, interpretation of this and general standards that Councillors should uphold. However, they do not of themselves create a statutory obligation for Councillors, and the Monitoring Officer, District Council or the Town/ Parish Councils cannot accept allegations that a Councillor has breached these principles in themselves.

Principles in detail:

Selflessness – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends. They should never improperly confer an advantage or disadvantage on any person.

Integrity – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. This is because this may lead to their integrity being questioned and there may also be issues in relation to the Bribery Act 2010, with interpretation of this behaviour and possible criminal liability if a Councillor acts in this way. ECDC Councillors are also referred to the Council's Policy Statement covering the Bribery Act 2010 which is included in Part 4 of the Constitution.

Objectivity - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

¹ August 2012

Accountability - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. They should co-operate fully and honestly with any scrutiny.

Openness - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands this. This would only be where there are clear legal reasons for confidentiality and/ or restrictions on disclosure which arise under the Local Government Act 1972, or as any legitimate exemption or exception under the Data Protection Act 1998, Freedom of Information Act 2000, or Environmental Information Regulations 2004.

Honesty - Holders of public office have a duty to declare any interests that they have when undertaking their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Councillors should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Leadership – Holders of public office should promote and support these principles by leadership and example.

This will help secure or preserve public confidence in local government and its decision making/ actions.

When the Code applies:

The Code applies to all ECDC District Councillors and co-opted Councillors and to any Councillor whose Council has adopted this version of the Code.

It applies to Councillors when they act or give the impression of acting as a Councillor for their authority and the responsibility for complying with the Code *rests with Councillors*.

The Code **does not apply to private capacity**; therefore if a Councillor is convicted of an offence that does not relate to their actions as a Councillor or giving the impression of acting as a Councillor then it does not fall within remit of the Code.

HOWEVER, Councillors must note that the Act places statutory obligations on Councillors under sections 30-31 to register and disclose certain interests known as Disclosable Pecuniary Interests ('DPIs') and prohibits participation in meetings where these DPIs are going to be considered in a meeting – unless a Councillor has a Dispensation (see post). These DPIs are listed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and are set out in Appendix A to the Code.

The Monitoring Officer also has a legal duty under section 29 of the Act to establish and maintain a Register of Interests of Councillors and co-opted Councillors for the District and Town/ Parish Councils.² This must be available for inspection and on the District Council's website. Where a Town/ Parish Council has a website, then that Council must legally publish a copy. Town/ Parish Councils have, however, been advised by the Monitoring Officer that this requirement should be served by providing a link to the forms held by the District from the Town/ Parish website, providing this link is checked regularly by the Clerk. Note that the Code does not apply to the actions of authorities as a whole, or to the conduct of its Officers and employees, which should be covered by their contracts of employment and also, in the case of employees of ECDC, the Employee Code of Conduct.

² s29(1) & (4)-(6) of the Act.

Section 2

Part 1 of the Code - General Provisions/ obligations

Treating others with respect (paragraph 3.1)

This is an obligation under paragraph 3.1 of the Code.

In politics, there will be rivalries and either formal political parties or informal alliances even within those groups. Each political group will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Discussions may become heated and this is part of the rough and tumble of political life. There will be criticism of ideas and opinion, which is part of democratic debate, and does not in itself amount to failing to treat someone with respect (or indeed bullying).

Ideas and policies may be robustly criticised, but Councillors should not subject individuals to an unreasonable or excessive personal attack. Where these are directed from within a particular political group towards another Councillor of that group, and complaints arise, then the Monitoring Officer would look to the Leader of that group to deal with this, within party rules or process in the first instance.

It does, however, become a more significant issue when Councillors deal with the public and, dependent on the nature of the criticism, Officers. Policies can be robustly examined, and such questioning may come from the public. Equally Councillors may not be happy with the way that a report/ or action has been undertaken by an Officer – and there are legitimate routes to examine this, rather than trying to “name and shame” in a Committee meeting in a way that could be seen as disrespectful.

Whilst it is acknowledged that some members of the public can make unreasonable demands on Councillors, Councillors should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its representatives and could result in a complaint for breach of this paragraph of the Code.

Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct (from Councillors or the public).

Complying with UK equality laws (paragraph 3.2(a)):

This is an obligation under paragraph 3.2(a) of the Code. A Councillor must not do anything that may cause their authority to breach any UK equality laws. Equality laws prohibit discrimination on the grounds of:

- race;
- sex;
- sexual orientation;
- disability (or because of something connected with the disability);
- religion or belief;
- being a transsexual person;
- having just had a baby or being pregnant;
- being married or in a civil partnership; or
- age.

These are known as '*protected characteristics*'.

Types of discrimination

Discrimination comes in one or more of these four forms:

- direct discrimination - when someone is treated less favourably than others in the same circumstances.

- ❑ indirect discrimination - when someone puts in place rules that apply to everyone, but put a person or group at an unfair disadvantage because of a protected characteristic, because of those rules.
- ❑ harassment - unwanted or uninvited behaviour that is offensive, embarrassing, intimidating or humiliating.
- ❑ victimisation - when a person is treated less favourably than someone else because they have complained about discrimination, or supported someone else who has.

Equality laws also impose positive duties to eliminate unlawful discrimination and harassment and to promote equality. They also impose specific positive duties on certain authorities. Under equality laws, a Councillor's authority may be liable for any discriminatory acts that the Councillor has committed when they act in their official capacity. A Councillor must therefore be careful not to act in a way that may amount to any of the prohibited forms of discrimination, or to do anything that hinders their authority's fulfilment of its positive duties under equality laws. Such conduct may cause a Councillor's authority to break the law, result in the Council having to pay substantial compensation and a Councillor may become the subject of a complaint that the Code has been breached.

Bullying and intimidation (*paragraphs 3.2(b)&(c)*):

Under paragraph 3.2(b) and 3.2(c) of the Code, a Councillor has an obligation not to bully or intimidate any person, complainant, witnesses or those involved in the investigation or proceedings relating to a complaint that a Councillor has breached the Code. This includes not bullying or intimidating other Councillors, Council Officers or members of the public.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press, in emails or in blogs/ or other social media. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a Councillor will be found to have bullied when both parties have contributed to a breakdown in relations/ or involved in similar comments or behaviour in the past.

Bullying behaviour can undermine an individual or a group of individuals, can be detrimental to their confidence and capability, and may adversely affect their health. If employees complain they are being bullied or harassed by a Councillor then notwithstanding the Code, they may have a grievance against the authority, which can result in claims against the Council and compensation being paid.

This can be contrasted, as indicated above, with legitimate challenges that a Councillor can make when questioning policy or scrutinising performance. An example of this would be debates in the Council meetings about policy, or asking Officers to explain the rationale for the professional opinions they have put forward. A Councillor is entitled to challenge fellow Councillors and Officers as to why they have come to a particular conclusion. However, as indicated above, it is important that a Councillor raises issues about performance in the correct way and in the proper forum (to line managers rather than directly attack staff in public meetings or via correspondence). Conversely if a Councillor's criticism is a personal attack or of an offensive nature, then a Councillor is likely to be acting in an unacceptable manner.

Equally a Councillor must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code, as this will be a breach of paragraph 3.2(c).

It is always wrong to intimidate or attempt to intimidate any person involved in an investigation or hearing. A Councillor will have their say during any investigation or hearing, and a Councillor should let these processes follow their natural course. If a Councillor intimidates a witness in an investigation about their conduct, then a Councillor may find themselves subject to another complaint that they breached this paragraph of the Code.

ECDC Councillors are also referred to the Protocol on Member/Officer relations in Part 5 of the Constitution, which provides a framework for working relations with Officers and further guidance on appropriate ways to interact.

Compromising the impartiality of Officers of the authority (*paragraph 3.2(d)*):

A Councillor must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, their authority, as this would breach paragraph 3.2(d) of the Code. This means that a Councillor should not approach or pressure anyone who works for, or on behalf of, the Council to carry out his or her duties in a biased or partisan way. Staff must carry out their duties in an impartial way and should not be compelled or persuaded to act in a way that would undermine their neutrality.

For example, a Councillor should not put pressure on an Officer to change their conclusions in their reports to Committees or Council, so that they accord with a political aim or get an Officer to help a Councillor prepare party political material. In the former case this does not mean that an Officer will not be expected to take policies of a majority group through the democratic decision-making process, but it will mean that, for example, in Regulatory or Administrative Committees (like Licensing or Planning) Officers will be expected to come to their own professional conclusions on the merits of applications – and should be not pressured to changing these for ulterior purposes.

A Councillor should not provide or offer any incentive or disincentive or reward in return for acting in a particular way or reaching a particular decision.

Nevertheless, as indicated, Councillors can robustly question staff in order to understand their reasons for proposing to act in a particular way, or the content of a report that they have written, but in doing so a Councillor must not try to force an Officer to act differently, change their advice, or alter the content of that report.

ECDC Councillors are also referred to the Protocol on Member/Officer relations in Part 5 of the Constitution, which provides guidance on the political neutrality of Officers and Officer support.

A Councillor must not bring his/her office or authority into disrepute (*paragraph 3.2(e)*):

This is an obligation under paragraph 3.2(e) of the Code.

A Councillor's actions are subject to greater scrutiny than that of the public. Councillors should be aware that the actions they undertake in their public life might have an adverse impact on their office or their authority. Dishonest and deceitful behaviour in their role as a Councillor may bring their authority into disrepute. This paragraph of the Code may also be viewed in conjunction with others in the Code, so that for example, if a Councillor is alleged to have intimidated a witness in a Councillor conduct investigation, then there may also be an allegation that in doing so a Councillor has brought their office into disrepute. Equally, if a Councillor discriminates against someone then they may also be seen to have brought their authority into disrepute.

Disclosing confidential information (*paragraph 4.1*):

Paragraph 4 of the Code provides that a Councillor must not disclose confidential information, or information which a Councillor believes is confidential in nature,

In the broadest terms, confidential information would include facts, advice and opinions in written materials (correspondence and emails), tapes, videos, CDs, DVDs, other electronic media and may cover oral information provided – where it is indicated that this is confidential, or the Councillor should reasonably be aware is confidential.

Information is confidential:

- ❑ if the nature of the information is sensitive or personal;
- ❑ if it is information that people would want to be private;
- ❑ if it was divulged in a way which implied it should be kept confidential;
- ❑ if disclosing the information would be detrimental to the person/ body who wishes to keep it confidential (for example it is a business secret);
- ❑ if the Council or Committee has voted to treat the information as exempt, or the documents have been marked confidential/ or sent with an email marked as such, then a Councillor should maintain it as confidential.

A Councillor may, however, be able to justify disclosure of confidential information, where:-

- (a) they have the consent of a person authorised to give it;
- (b) they are required by law to do so;
- (c) the disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
- (d) the disclosure is:-
 - (i) reasonable and in the public interest; and
 - (ii) made in good faith and in compliance with the reasonable requirements of the authority.

Note that (a)-(c) above are fairly self-explanatory and reasonably easy to determine or prove. However, disclosure of confidential information in the public interest requires further explanation and would be met if:

- ❑ the disclosure is reasonable: this is a matter of judgment; however, when making this decision, Councillors should carefully consider why they want to disclose the information, whether it is true, how serious the issue is and who to tell. If a Councillor does not believe the information to be true then it is unlikely to be reasonable to disclose it.
- ❑ the disclosure must be in the public interest: information is in the public interest if the public interests in disclosure would outweigh the public interest in keeping the information confidential AND if:
 - ⇒ a criminal offence has been committed;
 - ⇒ the authority has/ or is about to fail to comply with its legal obligations;
 - ⇒ a miscarriage of justice has or is likely to occur;
 - ⇒ a person's health and safety is in danger;
 - ⇒ the environment is likely to be damaged; and/ or
 - ⇒ information about any of the issues above is deliberately concealed.
- ❑ the disclosure must be made in good faith: the disclosure will not be justified if it is being made to promote the Councillor's interests or is for political gain.
- ❑ the disclosure is made in compliance with any reasonable requirements of a Councillor's authority: For example a Committee or Council report has been marked as exempt (i.e. at ECDC "Blue paper report") and has been marked not for publication under one of the exempt

information categories under Part 1 Schedule 12A of the Local Government Act 1972. If that is the case and a Councillor disagrees with this decision, then a Councillor should *firstly* raise his/her concerns through the appropriate channels (the report Officer, the Chief Executive or Deputy Chief Executive, Monitoring Officer or through Democratic Services).

ECDC Councillors are also referred to Part 5 of the Constitution and the “Protocol on Member/Officer relations” which provides guidance on dealing with confidential information. They are also referred to the “Protocol on Members’ access to Council held information” and the “Freedom of Information/ Environmental Information Regulation guidance to Staff and Members” on the intranet – which provides an indication of what information Councillors are entitled to and requirements relating to access to information by the public.

Preventing access to information (*paragraph 4.2*):

Councillors are referred to paragraph 4.2 of the Code. A Councillor must not prevent any person from accessing information that they are entitled to by law. This includes information, for example, under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of their authority which the public has a right to access.

ECDC Councillors are again referred to the “Freedom of Information/ Environmental Information Regulation guidance to Staff and Members” on the intranet. All Councillors can also find out what types of information the public can access, by visiting the Information Commissioner's website at: www.ico.gov.uk

Using a Councillor position improperly (*paragraph 5*):

Councillors must not use, or attempt to use, their position improperly to the advantage or disadvantage (gain or loss) of themselves or anyone else, as this would be a breach of paragraph 5 of the Code.

Using the authority's resources for proper purposes (*paragraph 6.1*):

Where a Councillor’s authority provides them with resources (for example telephone, computer and other IT facilities, transport or support from council employees), a Councillor must only use these resources or employees for carrying out their local authority business and any other activity that a Councillor’s authority has authorised them to use them for.

A Councillor should never use Council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. *However*, an authority may authorise a Councillor to use its resources and facilities for political purposes in connection with their authority's business. For example, ECDC District Councillor may claim allowances³ for hiring venues for holding surgeries in a ward. In this case, a Councillor must be aware of any limitations placed upon such use for these purposes. Using the authority's resources outside of these limitations is likely to amount to a breach of the Code.

Have regard to Local Authority Code of Publicity (*paragraph 6.2*):

When using the authority's resources, a Councillor must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act 1986. A Council is obliged to follow this Code of Publicity and the ECDC Guidance for Staff, Members and candidates during an Election Period in Part 5 of the Constitution. A copy of the Code of Publicity can be found under the following link:

<http://www.communities.gov.uk/publications/localgovernment/publicitycode2011>

³ Subject to restrictions, see Part 6 of the ECDC Constitution, page 6(2), 3.1(f)

A Councillor should be familiar / make themselves familiar with the rules applying to the use of these resources as failure to do so could breach paragraph 6.1 of the Code.

ECDC Councillors are also referred to the “Information Security Policy Manual” for a more detailed explanation of the Council’s requirements.

Other matters that may cause problems with the Code:

Blogging / use of social media and possible issues with obligations under the Code:

Blogging and use of social media can be effective methods for Councillors to interact with constituents and may be used to support local democracy. Used effectively they can engage those who would not normally have access to local Councillors and politics. ECDC is a part of the Cambridgeshire *shapeyourplace* at <http://shapeyourplace.org/> , which gives residents the ability to have their say on Council issues and receive responses from Council Officers and Councillors. Councillors may therefore be engaged in discussions on the website and should be aware of the possible pitfalls that could occur in terms of their responses.

Councillors should think about what and how they say things when blogging and using social media, in the same way that a Councillor should when discussing things in person or officially in writing. Councillors will need to be aware of whether they are acting as a Councillor, or giving the impression that they are doing so. When blogging or using social media, a Councillor should consider the following:

- ❑ use of social media is supposed to be reactive and quick – but a Councillor needs to think about what they are about to put down in a blog or on social media sites. Therefore make sure the comments are not: disrespectful/ bullying/ disclosing confidential information/ or bringing that Councillor making the comment or their authority in to disrepute. Check facts and make sure whatever is said is accurate;
- ❑ set appropriate privacy settings for a blog or site – especially if a Councillor has a private, non-political blog;
- ❑ keep an eye out for libellous/ defamatory, racist/ sexist/ discriminatory or obscene posts from others on the blog or page and *remove them as soon as possible* to avoid the perception that a Councillor condones these views;
- ❑ the higher a Councillor’s profile or role within the Council, the more likely it is that a Councillor will be seen as acting in their official capacity when blogging or going on a social media site;
- ❑ ensure that they use Council facilities appropriately; any posts / responses on *shapeyourplace*, for example, are likely to be viewed as comments made in a Councillor’s official capacity;
- ❑ that if a Councillor publishes information that they could only have accessed because they are a Councillor, then they are likely to be seen as acting in their official capacity; and
- ❑ that if a Councillor makes a political point, they should be careful about being too specific or personal. An attack on individuals may be seen as disrespectful, whereas general comments about another political party or genuine political expression is less likely to be viewed as disrespectful.

Section 3

Part 2 Interests

Disclosable Pecuniary Interests (DPIs) – what are they:

Whilst there is no model format for the Code, there is a legal requirement on Councillors under the Act to take certain actions when they have a DPI and for a relevant authority to adopt a Code that includes references to these DPIs.

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations (the ‘Regulations 2012 No 1464’) sets out what these DPIs are, and the requirements under the Act are to register and disclose interests that a Councillor, his/her spouse or civil partner, or a person with whom the Councillor is living as if they were a spouse or civil partner has (“relevant person”). These are set out in Appendix A to the Code.

Note that this potentially covers a spouse or civil partner that a Councillor is no longer living with, until divorce or dissolution of the civil partnership. Therefore, Councillors may be in a position where they have to register and disclose the DPIs of a spouse as well as someone they are then living with as a man and wife or civil partner. Nevertheless, Councillors are not obliged under the Act to ask what assets their spouse or civil partner, or a person with whom the Councillor is living with have (ie ‘relevant person’⁴), and do not have to identify the relevant person when registering their DPIs or disclosing the interest in a meeting. The DPIs have been replicated below, with further guidance in bold under the headings on what they mean.

In terms of DPIs and their effects on a Councillors participation in a meeting: section 31 of the Act indicates that if a Councillor has a DPI *"in any matter to be considered or being considered"* then they cannot participate. **In the absence of clear guidance from Central Government – or any court cases on the subject, and having discussed this with Monitoring Officers in the Cambridgeshire area, the conclusion is that this means that the DPI must be the subject of the matter/ directly about the Councillor’s DPI. IF SO, then the Councillor will be prevented from participating in the meeting (and may be required to leave the meeting if their authority’s Standing Orders require this – which is a requirement at ECDC).**

<i>Disclosable Pecuniary Interest</i>	<i>description</i>
Employment, office, trade, profession or vocation ⁵	<p>Any employment, office, trade, profession or vocation carried on for profit or gain.</p> <p><i>Note that this goes beyond work within a Councillor’s authority area. However, it will only be an issue at the Council meeting if this item is about the relevant person’s employer/ business. It is not anticipated that a Councillor would have a DPI that extended to any profession or trade or vocation discussions – HOWEVER, this may be subject to future clarification from Central Government guidance, or case law and if this is unclear Councillors should <u>seek advice</u>.</i></p>
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the *relevant period in respect of any expenses incurred by a Member in carrying out duties as a Member, or towards the election expenses of Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and</p>

⁴ For the purposes of the Regulations 2012 No 1464 they are referred to as ‘relevant person’ and this is detailed in Appendix A to the ECDC Code.

⁵ The word “vacation” is used in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 No 1464. This is, however, believed to be a typographical error and should read “**vocation**”.



Labour Relations (Consolidation) Act 1992.

Note that the *relevant period of time for this is within the last 12 month. Councillors do not have to include the allowances or expenses that they receive from their authority, although they may need to set out any allowances that a relevant person receives from another authority under this section, for example if they are a County Councillor and receive allowances from County Council. In this case, the DPI will be the person or organisation that has given the Councillor the sponsorship.

Contracts

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

Note, this means any on-going goods and services contracts that a relevant person (or their firm – if they are a partner or have other beneficial interests in the business) or a company (with a shareholding) have with their authority. FOR EXAMPLE on a simple level if a Councillor cuts the grass for the Parish Council or his/ her spouse does the accounts for the Parish under contract this will be a contractual DPI.

Land

Any beneficial interest in land, which is within the area of the relevant authority.

Note this includes residential or commercial property (usually also where a Councillor lives, as a Councillor will have some sort of tenancy, or ownership or right to occupy). It does not include easements – i.e. access to land, or rights that would not ultimately allow rights to occupy or receive income. When identifying the land, the full address for residential or commercial premises should be provided and for other land, a road/ map identification or TR/ OS Grid reference⁶ should be provided.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Note that this can cover a situation where a Councillor is “renting” a room in a house under licensing arrangements/ or in shared accommodation. This could also include an allotment a Councillor has with their Council.

Corporate tenancies

Any tenancy where (to a Member’s knowledge)—

- (a) the landlord is the relevant authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

⁶ See Adjudication Panel for England Decision APE 0167 Donington Parish Council case 11 June 2004.

Note, this means any tenancies that a relevant person (or their firm – if they are a partner or have other beneficial interests in the business) or a company (if the relevant person has a shareholding), has with their Council.

Securities

Any beneficial interest in securities of a body where—

(a) that body (to Member's knowledge) has a place of business or land in the area of the relevant authority; and

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Note this cover shares, debentures, debenture stock, loan stock, bonds, units of a collective investment schemes within the meaning of the Financial Services and Markets Act 2000 and other securities of any description in the Councillor's authority area. It does not include money deposited with a building society. It does not include money deposited in a normal bank account.

DPIs & criminal offences:

Section 34 of the Act sets out a number of potential criminal offences that would be committed if, without *reasonable excuse*, a Councillor:

- ❑ Fails to notify the Monitoring Officer of any DPI within 28 days of election;
- ❑ Fails to disclose a DPI at a Meeting if it is not on the register;
- ❑ Fails to notify the Monitoring Officer within 28 days of a DPI that is not on the register and was disclosed to a Meeting;
- ❑ Participates in any discussion or votes on a matter in which they have a DPI (*UNLESS* the Councillor has a dispensation);
- ❑ Knowingly or recklessly provides information that is false or misleading in notifying the Monitoring Officer of a DPI or in disclosing such interest to a Meeting.

The criminal penalties available to a Court are:

- ❑ A fine not exceeding level 5 on the standard scale (as at September 2012 - £5,000); and
- ❑ disqualification from being a Councillor for up to 5 years

Whilst Central Government Ministers have indicated that they believe these criminal sanctions apply to all Councillors (i.e. those currently sitting / elected or co-opted)⁷, at the point of preparing this guide, the legal position is unclear. Nevertheless, as these have been enshrined in the Code, then a Councillor must comply with the relevant paragraphs, and as the potential offences would apply, in any event, from the date that a Councillor is co-opted or re-elected, it is in the interests of

⁷ See letter Parliamentary Under Secretary of State, August 2012 accompanying DCLG Guidance August 2012

Councillors (and Councillors are advised) to comply with the spirit of the law and those provisions whilst acting in their public role.

What a Councillor needs to do if they have a DPI:

Under paragraph 8 of the Code a Councillor must:

- ❑ complete a Register of Interests form provided by the Monitoring Officer to include any DPIs that they have (as set out under the Appendix A heading above) within 28 days of adoption of Code or election or co-option and return this to the Monitoring Officer. Town/ Parish Councillors should normally return this, in the first instance to the Clerk, who will forward this on.
- ❑ register all changes of DPIs with the Monitoring Officer within 28 days. If these are minor changes, then part 11 of the Register form may be completed and initialled and returned. If the changes are more extensive, then a Councillor will be required to complete a new form, so that the interests are clear/ understandable.
- ❑ (where any item of business of the authority is about the Councillor's DPI) declare the DPI to the meeting of the authority, even *if* this is already on the Councillor's Register of Interests form. This is for the simple reason of transparency and openness. The public cannot be expected to know or check whether a Councillor has an interest, and it is therefore important that this is made clear in a meeting.
- ❑ leave the meeting at the point when the item of business relating to the Councillor's DPI is about to be dealt with. ECDC has Council Procedure Rules within its Constitution that also stipulate that Councillors with a DPI must leave a meeting, and what a Chairman should do if the Councillor refuses. Town/ Parish Councils have been advised to amend their Standing Orders to regulate the business of their authority in a similar way.

This is subject to a Councillor having applied for and being granted a dispensation. A relevant authority can grant a dispensation on the statutory grounds set out under section 33 of the Act. In reality this means delegating this to an Officer or Committee. At ECDC this has been delegated to the Monitoring Officer – to prevent unnecessary delay and conflict. Parish/Town Councils have been advised to delegate this power to their Clerk. If the Parish needs to deal with general dispensations to all Councillors (or the majority of Councillors), then a Committee or Sub-Committee is unlikely to be able to consider these applications – in case this involves considering their own application for a dispensation which is not allowed by virtue of section 33(4) of the Act (ie a Councillor cannot consider his/her own application for a dispensation). Therefore Parish/Town Councils should delegate the power to consider and grant general dispensations to their Clerk, otherwise there will be legal issues of granting general dispensations.

NOTE that under the Code, meetings of the authority are also deemed to include meetings with Officers of the authority – therefore Councillors should not discuss their DPIs that are to be considered by the Council (whether the Officer is making the decision under delegated powers or whether this will be made at a meeting of the Council). A Councillor can appoint an agent or make written representations on the subject. That does not mean that a Councillor cannot seek general advice from the Monitoring Officer/ Deputy Monitoring Officer/ Principal Democratic Services Officer on the interest and what they need to do in terms of the Code or other guidance within the Constitution. In terms of the Town or Parish Councillors they can equally approach their Clerk for similar advice or raise any issues with the Monitoring Officer. This is to ensure that all such matters are open and transparent to the public and to prevent any impression of pressure or favour on the part of Officer or Councillor.

What a Councillor can do if they have a DPI to represent their views:

- ❑ Make written representations in as a private citizen to the Council. It is recommended that the existence and nature of the interest should be disclosed in such representations;
- ❑ Appoint an agent to undertake discussions with Officers (this can include a family member unconnected with the Council);
- ❑ Possibly request that another Councillor represents views on the subject;
- ❑ Apply for a dispensation – but this will only be considered on the statutory grounds set out under the Act, which are replicated in Appendix B to the Code. See below for information on dispensation applications.

Other interests:

Personal and Prejudicial Interests:

Councillors at ECDC decided that they wished to register/ declare and restrict participation in relation to other interests that went beyond DPIs. It was believed that by simply having DPIs in a Code, this would not prevent Councillors from dealing with the business of their other family members or close friends, and that such interests needed to be clear, transparent and where necessary, a Councillor participation in relation to such interests restricted. For ease of reference, the terms Personal and Prejudicial Interests were used and *to some extent* are very similar to those interests in the old Model Code.

What is a Personal Interest:

This is dealt with under paragraph 10 of the Code. A Councillor has a Personal Interest in any business of the authority where it relates to or is likely to affect (see paragraph 10.1(a)):

- “(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
of which you are a member or in a position of general control or management;
- (iii) the interests of any person or body from whom a Councillor has received a gift or hospitality as a *Member*, with an estimated value of at least £100 in the last 3 years; **or**

10.1(b) a decision in relation to that business might reasonably be regarded as affecting your well-being⁸ or the well-being of a person or body listed in 10.2, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which a Councillor has been elected or otherwise of the authority’s administrative area,

AND that interest does not otherwise fall into the category of a Disclosable Pecuniary Interest.”

In respect of paragraph 10.1(a)(i) a Councillor should list any external body that they have been appointed to by their authority. A Councillor may not, strictly speaking be a member of this body or in control or management (i.e. a Trustee/ Director/ or on a management committee). In some

⁸ Defined as anything that could affect quality of life either positively or negatively.

instances they may be observers; nevertheless to prevent confusion it will be easier to list these on the Register of Interests form (under part 8).

As to paragraph 10.1(a)(ii) and whether other bodies fall within this category: the phrase "a body exercising functions of a public nature" has been subject to broad interpretation by the Courts to mean a variety of different purposes. It is not possible to produce a definitive list of such bodies; however, a Councillor should consider the following when deciding whether this is a body that meets that definition or not:

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

If the answer is 'yes' to one of the above questions, then a Councillor should treat this as a body exercising functions of a public nature and list it under part 9 of the Register of Interests form. This would include: regional agencies, other government agencies, other tiers of local government – for example if a Councillor was also on the Parish or County Council, public health bodies, council owned companies exercising public functions, arm's length management organisations carrying out housing functions on behalf of the authority, or school governing bodies.

A Councillor should also register any Charities where they are a member/ Trustee/ Director/ Governor (or may be known as an "Officer" of the Trust) or member of any management committee, as this is a requirement under paragraph 10.1(a) (ii) (bb) of the Code. This will include an incorporated or unincorporated Trust, and will cover, for example, charitable bodies established for recreational or educational purposes. This could be bodies like the Village Hall Trust or Leisure Centre. It would also cover being a Freeman.

Membership of a political group must also be declared also, together with trade union membership under this paragraph of the Code.

Unlike DPIs, this only relates to the Councillor's Personal Interests and a Councillor would not be expected to register or declare any Personal Interests of his/her spouse or civil partner, or a person with whom the Councillor is living as if they were a spouse or civil partner. Obviously if a decision affects those persons under the provisions of paragraph 10.1(b) then a Councillor may have to declare them at a meeting, but would not be expected to ask about or register these.

Gifts and hospitality:

Under paragraph 10.1 (a) (iii) a Councillor must declare any gift or hospitality received in the last 3 years that would have a value or estimated value of £100 – **IF** it is connected with the Councillor's role. A Councillor should do this within 28 days of receiving any new gift or hospitality of this value.

The question that a Councillor should ask themselves is whether this is connected to official duties and / or would this have been offered or provided if the Councillor was not on the Council.

A Councillor does not need to register gifts and hospitality that is not related to their role as a Councillor, such as Christmas gifts from friends and family, or gifts that a Councillor has not

accepted. However, a Councillor should always register a gift or hospitality if it could be perceived as something given because of their position as a Councillor.

If a Councillor does not know what the value of the gift or hospitality is, then as a general rule, if a Councillor is unsure and believes this would be around the £100 level, or there have been a number of small gifts/ hospitality from the same source in the preceding three year period that would add up to £100 or over, then this should be registered, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

Like other interests that a Councillor has to register, it will automatically be a Personal Interest in a matter under consideration if it is likely to affect the person or body who provided the gift or hospitality. If that is the case, then the Councillor must declare the existence and nature of the gift or hospitality, the person /or body who gave it, how the business under consideration relates to that person and then decide whether that interest is also a Prejudicial interest (see below).

Once three years have passed since the registration of the gift or hospitality then a Councillor's Register may be amended and the obligation to register and disclose that Personal Interest to any authority ceases.

If in doubt then register the interest, or speak to the Monitoring Office/ Deputy Monitoring Officer, or in the case of Town or Parish Councillors, their Clerk for clarification.

Affecting the well-being of a Councillor or person / body in listed in 10.2:

Under paragraph 10.1(b) of the Code, a Councillor will also have a Personal Interest in an item of business at a Council meeting if it affects the well-being of the Councillor, or person or one of the bodies listed under paragraph 10.2 of the Code. Namely:

- (a) a member of the Councillor's family or any person with whom a Councillor has a **close friendship**; or
- (b) any person or body or firm who employs or has appointed or are in partnership with those detailed in 10.2(a), (as an employee, partner or director);
- (c) any person or body in whom those detailed in 10.2(a) have a beneficial interest in a class of securities exceeding the nominal value of £25,000.

For the purposes of the Code, "well-being" is anything that could affect the quality of life either positively or negatively, and is only relevant if it does ***to a greater extent than it would affect the majority of Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which a Councillor has been elected or authority's area.***

What a Councillor needs to do if they have a Personal Interest:

Under paragraph 11 of the Code, a Councillor must:

- Register those that they need to register (under paragraph 10.1) within 28 days of adoption of Code or election/ co-option;
- register all changes of Personal Interests within 28 days (i.e. those that need to be registered under paragraph 10.1 of the Code);
- Declare at meetings where the Councillor is aware of an interest and **may remain and vote on the item – unless this has become Prejudicial.**

When a Personal Interest becomes Prejudicial:

Under the Code definitions in paragraph 1.5, this is when a Councillor has a Personal Interest in the business of the authority, and the decision of the Council would affect the financial or regulatory position of that person or body **and** the interest is one which the member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice a Councillor's judgement of the public interest.

A matter would relate to a regulatory position of that person or body, if this relates to an approval, consent, licence, permission or registration that affects the Personal Interest, for example: considering a planning or licensing application made by the body, family member or close friend; Licensing Act licence; pet shop and dog breeding licence; petroleum licence; street trading licences; taxi licensing (note, if the application is by the Councillor/ spouse or partner's employer then it would be a DPI).

What is so significant that it is likely to prejudice the Councillor's judgement?

A Councillor should ask themselves whether the interest is likely to be perceived as one what would impair their ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not be sufficient to meet the test. There must be some factor that might positively harm a Councillor's ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether a Councillor or a smaller group are particularly affected.

The general principle that must be remembered when applying this test is that a Councillor is acting in the public interest and not in the interests of family or a close friend. A Councillor is a custodian of the public purse and the public interest and behaviour and decisions should reflect this responsibility.

For example a Councillor would have a Personal and Prejudicial Interest in a planning application, if a member of his/her family lives next to the proposed site. This is because the Councillor's family member is likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward affected by the decision. The existence of the family tie means that a reasonable member of the public is likely to think that it would prejudice a Councillor's view of the public interest when considering the planning application. It does not matter whether it actually would or not.

It will **not** be a Prejudicial Interest if this relates to receipt of statutory benefits; allowances, payments or indemnities provided to Members; or ceremonial honours given to Members or setting of Council tax, rates or precepts – even if this may affect a Councillor more than the majority of inhabitants of the ward affected by the decision as these have been specifically excluded from the definition under the Code (see definition under 1.5 of the Code⁹).

HOWEVER, at the point of preparing this guide, there is debate on whether the setting of Council tax/ discounts, rates or precepts (where it affects the payments of Council tax that a Town or Parish resident will have to make, or the Councillor or their business) would be a DPI in the meeting that considers the matter (ie because of their land or business in the authority area). As there are *no automatic exemptions from DPIs* this would mean that a Councillor cannot participate in any Council meeting where these are considered or take part in the Council decision to set these. Under the old Code there were statutory exemptions – relating, for example, to Council tax and benefits and these have not been provided by Parliament in the Act or the Regulations – therefore this would appear to prohibit all Councillors voting on such an issue – and this cannot have been the intention of Parliament, as it is part of the routine business of the Council.

⁹ Note the Code as drafted also states that Council Tax & precepts will not be a Prejudicial Interest and this has subsequently been clarified to Clerks and Councillors on 21 September 2012 and 24 September 2012 – in that these will be considered DPIs and a dispensation should be applied for and granted for matters dealing with these issues.

As with any general business that a Council must undertake on a regular basis, a dispensation can be applied for by Councillors and granted on set grounds and consideration will be given by the Monitoring Officer to granting dispensations where this applies. Town or Parish Clerks will also have to consider granting dispensations for their Councillors for issues relating to setting of precepts, however, should also consider doing this for Prejudicial Interests, where this relates to bodies that are linked to the Parish (such as Trusts, established/ or set up/ or run effectively by the Parish). If the Parish/ Town Council has delegated the power to grant dispensations to a Committee or Sub-Committee then they are advised to delegate consideration and granting of general dispensations to the Clerk. See below for information on dispensation applications.

What a Councillor needs to do if they have a Prejudicial Interest:

- ❑ Declare that they have a Prejudicial Interest at the Council meeting before consideration of the item and should leave the meeting when the item comes up.
- ❑ HOWEVER, the Councillor can exercise a “Speaking Right” under paragraph 13 of the Code in relation to Prejudicial Interest, must declare the interest and their intention to exercise the Speaking Right and can remain in the meeting to do so, which means they can speak, make representations and answer questions. A Councillor can do so even where there is no public speaking scheme. **NOTE THE SPEAKING RIGHT CANNOT BE EXERCISED IN MEETINGS WHERE THE PRESS & PUBLIC ARE EXCLUDED (EXEMPT/ CONFIDENTIAL ITEMS)– IE FOR ECDC COUNCILLORS WHEN CONSIDERING “BLUE PAPER” REPORTS.**
- ❑ The Councillor must exercise this right and **then leave** before the debate and vote. A Councillor cannot remain in the public gallery to observe the vote on the matter. At ECDC this is further supported by Council Procedure Rules, which require a Councillor to leave the room if they have a Prejudicial Interest, and to leave once any Speaking Right has been exercised (if the Councillor has indicated that they intend to exercise this Right). Note that Parish/ Town Councils have been advised to amend their Standing Orders to reflect the requirement for Councillors to leave, once the Speaking Right has been exercised.
- ❑ ***If a Councillor does not wish to exercise a Speaking Right, then they must not participate in the meeting and must leave – UNLESS a Councillor has obtained a dispensation.***
- ❑ A Speaking Right should not be exercised at meetings with Officers.
- ❑ Speaking Right does **NOT** apply to DPIs.

Note that if the Chairman of the meeting decides that a Councillor should finish speaking, despite their intention to say more, then a Councillor must comply with the Chairman’s decision. Although members of the public are generally allowed to observe the discussion / vote on the matter, a Councillor with a Prejudicial Interest is not allowed to do so and must leave the room immediately. Failure to do so may be viewed as an attempt to improperly influence the meeting and if this relates to a District Councillor it will be in contravention of ECDC Council Procedure Rules. It may also be viewed as improper (in terms of other elements of the Code of Conduct) if a Councillor refuses to leave the meeting, or continues to speak to a meeting on a matter in which they have a Prejudicial Interest, after the Chairman of the meeting has decided that they must stop speaking and leave.

Interests that are “Sensitive Interests”:

A DPI or Personal Interest may be sensitive – *if* the disclosure of the details of the interest could lead to the Councillor or person connected with the Councillor being subject to **violence** or **intimidation**. If the Councillor believes this would be the case, then the Councillor needs to discuss this with the Monitoring Officer. A Councillor should explain their concerns regarding the disclosure of the sensitive information, including why it is likely to create a serious risk of violence or intimidation. *If the Monitoring Officer agrees*, then the details that need to be entered on the Register (both DPI and Personal) and disclosed at meetings, will be limited to stating that the Councillor has a sensitive interest in a particular item.

The Register will still have to say that the Councillor has a “sensitive interest” under the relevant heading on the Register and Councillor will still need to declare this at any relevant meeting and then leave, where this is a DPI or a Prejudicial Interest.

So what’s the difference between a DPI and a Personal/ Prejudicial Interest in a meeting:

- Is the item at the meeting about one of the Councillor’s DPIs? **YES** – then this is a DPI.
 - ✓ Cannot participate
 - ✓ Must leave meeting – unless has dispensation

- Is the item at the meeting about one of the Councillors Personal Interests – ie those listed under 10.1 (a) (i)-(iii)? OR about the Councillor or his/her family or close friends’ well being? **YES – then**

- does it affect them financially / or is this a regulatory issues (like planning or licensing)? AND WOULD THE REASONABLE PERSON BELIEVE THAT THE COUNCILLOR’S INTEREST IS SO SIGNIFICANT AS TO AFFECT THE COUNCILLOR’S ABILITY TO JUDGE THE PUBLIC INTEREST? **IF YES** – then this is a Prejudicial Interest.
 - ✓ Cannot participate – unless going to exercise Speaking Right
 - ✓ Cannot use the Speaking Right in a meeting with Officers or where the item is discussed in confidential / exempt session

Dispensations for DPIs & Prejudicial Interests:

Under the Act, a Councillor may apply to a relevant authority for a dispensation from the restriction on participation of meeting if they have a DPI. The application must be in writing to the proper officer. At the District Council the application should be made to the Monitoring Officer and a Parish/ Town level, you will need to check with the Clerk.

There are five grounds for the application under section 33 of the Act. Not all of these grounds would apply to a District Councillor (only four of the five) and only three would apply to Town or Parish Councils (as they relate to political proportionality – which do not apply to Town or Parish Councils).

Section 33(1) provides that:

“A relevant authority may, on a written request made to the proper Officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.”

The relevant grounds are that:

- the numbers of Councillors prohibited from participating is so great that it would impede the transaction of the business of the Council;

- ❑ **the representation of different political groups transacting particular business would be so upset as to alter the likely outcome of any vote¹⁰;**
- ❑ it is in the interests of persons living in the authority's area; or
- ❑ it is considered that it is otherwise appropriate to grant a dispensation.

Such a power must be delegated, in the District Council's situation to a Committee/ Sub-Committee or Officer. In ECDC case this has been delegated to the Monitoring Officer to decide. Again, in terms of Town or Parish Councils – whilst this can be delegated to a Committee or Sub-Committee of the Council or Officers, it is recommended that this be delegated to the Clerk. This is because: if the Parish needs to deal with general dispensations to all Councillors (or the majority of Councillors), then a Committee or Sub-Committee is unlikely to be able to consider these applications – in case this involves considering their own application for a dispensation which is not allowed by virtue of section 33(4) Act (ie a Councillor cannot consider his/her own application for a dispensation). Therefore Parish/Town Councils should at least delegate the power to consider and grant general dispensations to their Clerk, otherwise there will be legal issues of granting general dispensations.

What can you grant under a dispensation?

Under section 33(1) the authority (ie the Monitoring Officer / or Clerk / or Committee of the Town/ Parish) may “relieve” the Councillor the restrictions placed on them in relation to participation / voting on a matter that they have a DPI. Whilst the Act does not cover the specifics of Prejudicial Interests (this is something that ECDC decided to include in its Code), there is nothing to prevent the authority from applying the same criteria and decision when coming to a decision on whether to grant a dispensation in relation to Prejudicial Interests.¹¹. This means that the Councillor can be granted rights to participate/ and or vote if the Officer/ Clerk or Committee believe that it would reasonably fit within the criteria set out under section 31(4) of the Act.

Application forms have been drafted to deal with such matters – however, both the Monitoring Officer and the Parish/ Town Councils may take a view on what is required from a Councillor when dealing with any block dispensation (for example so that Councillor can make decisions on Council tax or precepts). If a Councillor needs a dispensation, then they should apply for one as soon as is reasonably possible.

For further enquiries about the Code contact:

Jeanette Thompson
Monitoring Officer
East Cambridgeshire District Council
Jeanette.thompson@eastcamb.gov.uk
Enquiries: 01353 665555

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¹⁰ This ground would not apply to Town or Parish Councils.

¹¹ In terms of the District Council, to the extent not expressed in the Act, this could fall under the general power of competency – section 1.