

## **Ettington Parish Council**

### **GUIDANCE ON CODE OF CONDUCT**

This document has been produced to offer guidance on the revised Code of Conduct for Members as adopted from 14 March 2018. The Code applies to all Members and co-opted members of Ettington Parish Council.

The Code does not apply to the actions of the authority as a whole, nor to the conduct of its officers and employees.

Ultimately, it is an individual Member's responsibility to take specific advice from the Clerk or Stratford District Council's Monitoring Officer where appropriate and to make a decision as to the most suitable course of action.

#### **Code of Conduct**

The Code of Conduct ("the Code") is not intended to be an exhaustive list of all the obligations that are placed on Members, but it is the responsibility of individual Members to comply with the provisions of the Code as well as such other council protocols and legal obligations as may apply to them.

The Code is intended to be consistent with the seven principles of public life as attached to the Code which define the standards that Members should uphold. A failure to act in accordance with these general principles may amount to a breach of the Code of Conduct. For example, by placing yourself in situations where your honesty and integrity may be questioned, your conduct may be conduct which could "bring your office or your Authority into disrepute".

#### **When does the Code apply to you?**

The Code applies to you whenever you act in your official capacity as a Member or co-opted member of the Authority. This means it applies when you are carrying out your official duties, for example when you are considering or discussing council business. A co-opted member is a person who is not an elected Member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee.

For the purposes of the Code, a "meeting" is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

#### **The Code of Conduct**

The Code is divided into two sections. The first section deals with the behaviour expected by you when conducting council business. The second section sets out the rules relating to the register of your interests and the circumstances when an interest needs to be declared in a council meeting.

## **Respectful behaviour**

### **1. Do not treat others with disrespect**

You must treat everybody with whom you deal with respect.

In politics, rival groupings are common, either in formal political groups or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the politics and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subjected to unreasonable or excessive personal attacks. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst there may sometimes be unreasonable demands on Members and people may seek to provoke Members, you should treat people courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives. You must therefore be aware of your impact on others, value openness and listen carefully to understand the views of others. This includes not only when talking to people face to face but in correspondence, email and on social media when you are discussing or conducting Council business. Further details are set out in Council policies such as its social media policy.

In particular you must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to breach the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct.

**It is not disrespectful to question political opinions or to have a differing point of view to somebody. It is disrespectful to use offensive language or to attack an individual's appearance or characteristics or to accuse them of dishonesty, wrongdoing or incompetence without producing any evidence, thereby seeking to damage their reputation.**

### **Use of position**

- 2. Do not use your position as a member of the Council for personal financial gain.**
- 3. Do not use your position as a member of the Council improperly to confer an advantage or disadvantage on yourself or any other person.**
- 4. Do not place yourself under any financial obligation to any person or organisation who might attempt to influence you**

These three obligations under the Code all relate to ensuring that as a Member you do not seek to abuse the position with which you have been entrusted by the electorate.

### ***Improper use of position***

Your behaviour would be improper if you sought to further your private interests through your position as a Member.

Elected Members of the Council are responsible collectively for administering resources on behalf of the public of the area that you serve. You should administer these resources fairly and in accordance with the law. It is inappropriate for the Council's resources or powers to be used in such a way that the authority and its Members be left open to accusations that inappropriate influence played a part, for example, "it's not what you know, it's who you know!"

### ***Placing yourself under an obligation***

It would not be appropriate to accept favours, gifts or hospitality from someone that may, at a later date, require something from the Council that you are in a position to influence. For example, because you are a Member you may be offered a discount by a business in the area which subsequently applies for planning permission and/or a licence. You may be on the relevant committee dealing with the application and, therefore, be in a difficult position. Any gifts or hospitality you do receive in your role as a Member should be declared to the Monitoring Officer of the Council. Further detail is set out in the Council's policy on gifts and hospitality.

### ***Officer neutrality***

You should respect the impartiality and integrity of the Council's employees. With one or two potential exceptions, officers of the Council work for the Authority as a whole and not for any single political grouping.

You should not approach or pressure anyone who works for, or on behalf of the authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they

have written, you must do so with respect and not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

## **Resources**

### **5. Do not misuse council resources**

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

You must be familiar with the rules applying to the use of resources made available to you by your authority. Failure to comply with the authority's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by the authority's rules.

You should never use Council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. You can use Council resources for political purposes in limited circumstances where authorised by the authority, for example to hold Group meetings.

## **Confidentiality**

### **6. Do not disclose confidential information**

While Council business is by law generally open and Councils should always operate as transparently as possible, there will be times – for example, when discussing a named individual or commercially sensitive information – when it is appropriate for Council business to be kept confidential.

In those circumstances, you must not disclose confidential information, or information which you believe to be of a confidential nature, unless:

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

4. the disclosure must be made in compliance with any reasonable requirements of your authority

In relation to the disclosure of confidential information in the public interest, the four requirements are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:
  - Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
  - Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
  - The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
  - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
  - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
  - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to reoccur.
  - Whether the disclosure involves your authority failing in a duty of confidence owed to another person.
2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:
  - (a) A criminal offence is committed.
  - (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
  - (c) A miscarriage of justice occurs.
  - (d) The health or safety of any individual is in danger.
  - (e) The environment is likely to be damaged.
  - (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.
3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

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

### **Disrepute**

#### **7. Do not bring the Council or the role of Councillor into disrepute**

You must not bring your Council or the role of Councillor into disrepute whilst carrying out Council business or acting in your role as a representative of the Authority.

As a Member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on your office or your authority. Dishonest and deceitful behaviour in your role as a member may bring your authority into disrepute.

While the Code only applies to you when you are acting as a Member, you should nevertheless be aware that certain private actions can have a detrimental effect on your reputation, the reputation of your political group or the Council as a whole. Members are therefore asked to bear in mind the seven principles of public life at all times.

You have a duty to promote and support high standards of conduct and be consistent with the seven general principles attached to the Code.

## **INTERESTS**

The second part of the Code sets out rules on registration and declaration of interests.

## **REGISTER OF INTERESTS AND GIFTS**

Any interests notified to the Clerk will be included in the register of interests unless it is a 'sensitive interest' (see below). A copy of the register must be available for public inspection and must be published on the authority's website.

You have two types of registrable interests -

- (a) A Disclosable Pecuniary Interest; and
- (b) Other Interests that the Council has decided should be registered

### **Disclosable Pecuniary Interests (Part A of the Register)**

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

You need to register your interests so that the public, the authority's staff and your fellow Members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a potential conflict of interest.

The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other Members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local government is maintained.

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) and the categories covered are set out in Appendix A of the Code. Further guidance and definitions is included on the Declaration Form to be signed by Members.

### **Offences**

It is a criminal offence under the Localism Act to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register

- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

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

### **Other Registerable Interests (Part B of the Register)**

In addition to the disclosable pecuniary interests above, you must, within 28 days of the Code being adopted by your authority; or your election or appointment to office (where that is later), notify the Monitoring Officer in writing of the details of your interests within the following categories, which the Council has decided must be included in the register of interests:

- (a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (b) Details of any body of which you are a member or in a position of general control or management and which –
  - (i) exercises functions of a public nature,
  - (ii) is directed to charitable purposes, or
  - (iii) is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade union);
- (c) Details of any persons from whom you have received a gift or hospitality with an estimated value of at least £30. (You must register any gifts and hospitality worth £30 or over that you receive personally in connection with your official duties).

With Other Registerable Interests, members are only obliged to register their own interests and do not need to include interests of spouses or partners. Therefore, a spousal interest in a local group is not registerable as an ‘other registerable interest’.

### **Definitions**

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

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

- Does that body carry out a public service?

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

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

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

### **Do local campaigning or Facebook groups need to be registered?**

Membership of local campaign or Facebook groups will only need to be registered if they are Bodies:

- Exercising functions of a public nature;
- Directed towards charitable purposes; or
- One whose principal purpose includes influencing public opinion or policy.

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

If you need further information or specific advice, please contact your Monitoring Officer.

### **What about membership of a political party or trade union?**

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

### **Gifts and Hospitality**

You must register a gift or hospitality received in your capacity as a councillor if the estimated value exceeds £30.

You should ask yourself whether you would have received the gift or hospitality if you were not on the Council. If you are in doubt as to the motive behind an offer of

a gift or hospitality, we recommend that you register it or speak to the Monitoring Officer before deciding whether to accept it. You should also refer to the Council's policy on gifts and hospitality.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position.

### **Changes to Interests on your register**

You must, within 28 days of becoming aware of any new interest or change to any interest registered notify the Monitoring Officer of the details of that new interest or change.

### **Sensitive interests**

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

### **What is sensitive information?**

It may include your sensitive employment (such as certain scientific research or the Special Forces) or other interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you.

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

## **DECLARATIONS OF INTERESTS AT MEETINGS**

Where you have an interest in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of that interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

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

This means there are three types of interest where you may have to declare an interest: disclosable pecuniary interests (Part A of the Register); Other

Registerable Interests (Part B); and non-registerable interests. Guidance is given below on each of these categories in turn.

### **Non participation in case of disclosable pecuniary interest**

If you are present at a meeting of the Council, Cabinet or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting:

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

This is covered in paragraph 10 of your Code.

**In addition, your authority's rules might require you to leave the room where the meeting is held while any discussion or voting takes place.**

Where a member of the Cabinet of the District Council is discharging a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Cabinet member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

### **When do I have a Disclosable Pecuniary Interest?**

You have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed directly relates to your interest. For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

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

You are reminded that non-declaration of a DPI is a criminal offence (see above).

### **Declaration of other interests**

#### **Other Registerable Interests (Part B of the Register)**

If you have an 'Other Registerable Interest' you must declare that interest when a matter directly relates to that interest. For example, if you are a member of a group which has applied for funding from the Council, or if you are a member of an

organisation which has submitted a planning application, the matter in hand directly relates to that organisation.

In such a case you must not take part in any discussion or vote on the matter. You are allowed to speak on the matter before withdrawing but only where the public are also allowed to address the meeting. For example, you may want to put forward the organisation's case as to why it has applied for funding, but representatives from competing organisations would also need to be able to make their case. Paragraph 11 of your Code sets out the rules on this.

### **Non-registerable Interest**

A Non-registerable Interest needs to be declared where the matter under discussion **relates to or affects** an interest of you, a friend, relative or close associate or **affects** your interests that you have declared in Part A of the Register or that of a registerable body that you have declared in Part B of the register. Paragraph 12 of the Code explains what you need to do.

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

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

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

An example of a non-registerable interest with regard to a friend or relative would be, for example, where the matter under discussion was your son's planning application. You are clearly not expected to register all your relatives' properties but as and when something which relates to them occurs in a meeting you would need to declare that interest. Similarly an application next door to your son would clearly affect their property even though it didn't relate directly to it.

Similarly an application for the property next door to you does not directly relate to your property so paragraph 10 of your Code would not apply but you would instead need to declare an interest under paragraph 12.

#### **What are the definitions of family member, friend or close associate?**

A member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

A friend or person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you would equally be willing to treat them differently.

### **What if I am unaware of the interest?**

You can only declare an interest in a matter if you are aware of the interest. For example, a company of which your father-in-law is a director may have made an application to the Council. You may not be aware that he is a director, but would need to declare an interest as soon as you became aware.

A reasonable member of the public would expect you to know of certain interests of course, so it is, for example, reasonable that you would be expected to know your daughter's address or job but not necessarily any shareholdings she might have.

### **What do I do if I have a non-registerable interest to declare?**

If the matter is a non-registerable interest you declare the interest in accordance with paragraph 12 of the Code.

Paragraph 13 then asks you to apply a 2-part test before considering whether to participate in any discussion and/or vote:

- a) Does the matter affect the interest more than it affects the majority of people in the ward?

For example, if a major development was affecting your sister's village and your sister were no more affected than anybody else – for example, she lived at the other end of the village rather than next door to the development, the answer would be no. If the answer is yes, you then ask:

- b) Would a reasonable member of the public knowing all the facts believe that it would affect your view of the wider public interest?

This is similar to the test for bias (see below) and if the answer is yes to that question then you must not take part in the meeting.

Where the matter is a 'sensitive interest' you need not declare the nature of it as above.

### **Examples**

To illustrate how the rules apply to different interest here are some examples relating to a planning application;

1. **You have put in a planning application for your own house.** This would be a **Disclosable Pecuniary Interest** as it relates directly to the property you have

registered. Under paragraph 10 therefore you cannot speak or vote on the item but must withdraw from the meeting

2. **The house next door to you has put in a planning application.** This would be a **Non-Registerable Interest** as the next door house is not on your register but nevertheless the application would affect you. In this case you would declare the interest under paragraph 12 and then apply the public interest test in paragraph 13 - are you more affected than the majority of people and would a reasonable member of the public therefore think your view of the public interest would be affected.
3. **Your son has put in a planning application.** This would be a **Non-Registerable Interest** as your son's house is not on your register but nevertheless the application relates to a family member. In this case you would declare the interest under paragraph 12 and then apply the public interest test in paragraph 13 - is your son more affected than the majority of people and would a reasonable member of the public therefore think your view of the public interest would be affected.
4. **The house next door to your son has put in a planning application.** This would be a **Non-Registerable Interest** as the house next door to your son is not on your register and does not belong to your son but nevertheless the application would affect a family member. In this case you would declare the interest under paragraph 12 and then apply the public interest test in paragraph 13 - is your son more affected than the majority of people and would a reasonable member of the public therefore think your view of the public interest would be affected.
5. **You are on the board of a local charity** and have registered this on Part B of your Register. **The charity puts in a planning application on its office.** This is an '**other registerable interest**' as it is on Part B of your register and the application directly relates to the charity. Under paragraph 11 of the Code you must declare an interest. You may speak about the application if other members of the public are allowed to speak but you cannot vote on the application.

### **Dispensations**

Wherever you have an interest the Code allows you to apply for a dispensation. The Monitoring Officer may grant a District councillor a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest. In the case of a parish or town councillor, a dispensation will be granted according to the council's own scheme of delegation rather than the Monitoring Officer. These circumstances are where -

1. It is considered that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
2. That, without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
3. That, without a dispensation, no member of the Cabinet would be able to participate on this matter.
4. That the authority considers that the dispensation is in the interests of persons living in the authority's area
5. That the authority considers that it is otherwise appropriate to grant a dispensation.

The attached flowchart gives a simple guide to declaring an interest under the Code.

### **Bias/Predetermination**

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct but members need to be clear that they are not biased or predetermined going into the decision making process. Otherwise the decision is at risk of being challenged on appeal or in the Courts.

The rules against bias say that there are three distinct elements. The first seeks accuracy in public decision-making and the second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices.

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

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

The rationale behind “automatic” or “presumed” bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased *in fact*. **In these circumstances you should not participate in a decision. These are covered by your Code’s requirement to declare certain interests and withdraw from participation.**

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

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