

Local Government, Housing and Planning Committee

7th Meeting, 2021 (Session 6)

Tuesday 5 October 2021

Cover note for Code of Conduct for Councillors

SG/2021/229

Title of Instrument:	Code of Conduct for Councillors
Type of Instrument:	Subject to approval of Parliament
Laid Date:	02 September 2021
Circulated to Members:	02 September 2021
Meeting Date:	5 October 2021
Minister to attend meeting:	Yes
Motion to approve:	S6M-01124—That the Local Government, Housing and Planning Committee recommends that the Code of Conduct for Councillors be approved.
Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	27 October 2021

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on the Code of Conduct for Councillors.

Background

2. Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 requires the Scottish Ministers to issue a Code of Conduct for Councillors (the Code).
3. The Code sets out the standards that all councillors must comply with when carrying out their council duties.
4. The current version of the Code was originally issued in 2010 following a limited review of the Code that the Scottish Government carried out in 2009. A further amendment was published in 2018 which addressed the specific issue of councillors' membership on regional transport partnerships.
5. This draft Code of Conduct amends the previous iteration of the Code to make it more user-friendly and bring it up to date.
6. The Scottish Government undertook a consultation to inform this draft Code of Conduct. An analysis of the responses to the consultation can be accessed via the following link.
<https://www.gov.scot/publications/second-consultation-analysis-report-councillors-code/>
7. A copy of the draft Code of Conduct is included in Annexe A.

Purpose

8. The purpose of the Code is to set out the conduct expected of every elected member of a local authority in Scotland.

Delegated Powers and Law Reform Committee consideration

9. At its meeting on 21 September 2021, the Committee considered the Code of Conduct for Councillor and determined that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Recommendation

10. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 27 October 2021.

Clerks

Local Government, Housing and Planning Committee

Annexe A

Code of Conduct for Councillors

[This version of the Code of Conduct is not yet in force. It has been laid before the Scottish Parliament by the Scottish Ministers and will come into force after it has been approved by the Parliament.]



CODE OF CONDUCT FOR COUNCILLORS

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SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

This Code has been issued by the Scottish Ministers, with the approval of the Scottish Parliament, as required by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the “Act”).

The purpose of the Code is to set out the conduct expected of every elected member of a local authority in Scotland.

The Code is also directed at co-opted members of committees and sub-committees who are not elected councillors, including religious representatives on Education Committees.

The Code has been developed in line with the nine key principles of public life in Scotland. The principles are listed in Section 2 and set out how the provisions of the Code should be interpreted and applied in practice.

My Responsibilities

I understand that the public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties. I will always seek to meet those expectations by ensuring that I conduct myself in accordance with the Code.

I will comply with the substantive provisions of this Code, being sections 3 to 7 inclusive and Annex A, in all situations and at all times where I am acting as a councillor, have referred to myself as a councillor or could objectively be considered to be acting as a councillor.

I will comply with the substantive provisions of this Code, being sections 3 to 7 inclusive and Annex A, in all my dealings with the public, employees and fellow councillors, whether formal or informal.

I understand that it is my personal responsibility to be familiar with the provisions of the Code and that I must also comply with the law and my council’s rules, standing orders and regulations. I will also ensure that I am familiar with any guidance or advice notes issued by the Standards Commission for Scotland (“Standards Commission”) and my council, and endeavour to take part in any training offered on the Code.

I will not, at any time, advocate or encourage any action contrary to the Code.

I understand that no written information, whether in the Code itself or the associated Guidance or Advice Notes issued by the Standards Commission, can provide for all circumstances. If I am uncertain about how the Code applies, I will seek advice from my council’s Monitoring Officer or other senior council employees. I note that I may also choose to seek external legal advice on how to interpret the provisions of the Code.

Enforcement

Part 2 of the Act sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission finds that there has been a breach of the Code. More information on how complaints are dealt with and the sanctions available can be found at Annex C.

SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The Code has been based on the following key principles of public life. I will behave in accordance with these principles and understand that they should be used for guidance and interpreting the provisions in the Code.

2.2 I note that a breach of one or more of the key principles does not in itself amount to a breach of the Code. I note that, for a breach of the Code to be found, there must also be a contravention of one or more of the provisions in sections 3 to 7 inclusive and Annex A of the Code.

The key principles are:

Duty

I have a duty to uphold the law and act in accordance with the law and the public trust placed in me. I have a duty to act in the interests of my council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which I have been elected to serve, and to represent their interests conscientiously.

Selflessness

I have a duty to take decisions solely in terms of the public interest. I must not act in order to gain financial or other material benefit for myself, family or friends.

Integrity

I must not place myself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence me in the performance of my duties.

Objectivity

I must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship

I am accountable to the public for my decisions and actions. I have a duty to consider issues on their merits, taking account of the views of others, and I must ensure that my council uses its resources prudently and in accordance with the law.

Openness

I have a duty to be as open as possible about my decisions and actions, giving reasons for my decisions and restricting information only when the wider public interest clearly demands.

Honesty

I have a duty to act honestly. I must declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

I have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of my council and its councillors in conducting public business.

Respect

I must respect all other councillors and all council employees and the role they play, treating them with courtesy at all times. Similarly, I must respect members of the public when performing my duties as a councillor.

SECTION 3: GENERAL CONDUCT

Respect and Courtesy

3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.

3.3 I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.

3.4 I accept that disrespect, bullying and harassment can be:

- a) a one-off incident,
- b) part of a cumulative course of conduct; or
- c) a pattern of behaviour.

3.5 I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.

3.6 I accept that it is my responsibility to understand what constitutes bullying and harassment and I will utilise resources, including the Standards Commission's guidance and advice notes, council policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.

3.7 I will not become involved in operational management of my council's services as I acknowledge and understand that is the responsibility of its employees.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.

3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

3.10 I will follow the Protocol for Relations between Councillors and Employees at Annex A and note that a breach of the Protocol will be considered a breach of this Code. I will also comply with any internal protocol the Council has on councillor / employee relations.

3.11 I will respect and comply with rulings from the chair or convener during meetings of:

- a) the Council, its committees or sub-committees; and
- b) any outside organisations that I have been appointed or nominated to by the Council or that I represent my council on.

Remuneration, Allowances and Expenses

3.12 I will comply with the rules, and my council's policies, on the payment of remuneration, allowances and expenses.

Gifts and Hospitality

3.13 I understand that I may be offered gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services ("gift or hospitality") that may be reasonably regarded by a member of the public with knowledge of the relevant facts as placing me under an improper obligation or being capable of influencing my judgement.

3.14 I will never **ask for** or **seek** any gift or hospitality.

3.15 I will refuse any gift or hospitality, unless it is:

- a) a minor item or token of modest intrinsic value offered on an infrequent basis;
- b) a civic gift being offered to the Council;
- c) hospitality which would reasonably be associated with my duties as a councillor or as a member of an arm's length external organisation to which I have been appointed or nominated by my council ("ALEO"); or
- d) hospitality which has been approved in advance by my council or the ALEO.

3.16 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.

3.17 I will not allow the promise of money or other financial advantage to induce me to act improperly in my role as a councillor. I accept that the money or advantage (including any gift or hospitality) does not have to be given to me directly. The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.

3.18 I will never accept any gift or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, my council.

3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to the Council at the earliest possible opportunity and ask for it to be registered.

3.20 I will promptly advise my council's Monitoring Officer if I am offered (but refuse) any gift or hospitality of any significant value and / or if I am offered any gift or hospitality from the same source on a repeated basis, so that my council can monitor this.

Confidentiality

3.21 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.

3.22 I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.

3.23 I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available).

Use of Council Resources

3.24 I will only use council resources, including employee assistance, facilities, stationery and IT equipment, for carrying out council duties in accordance with all my council's relevant policies.

3.25 I will not use, or in any way enable others to use, council resources:

- a) imprudently (without thinking about the implications or consequences);
- b) unlawfully;
- c) for any party political or campaigning activities or matters relating to these;
or
- d) improperly.

Dealings with my council and Preferential Treatment

3.26 I will not use, or attempt to use, my position or influence as a councillor to:

- a) improperly confer on or secure for myself, or others, an advantage;

- b) avoid a disadvantage for myself, or create a disadvantage for others; or
- c) improperly seek preferential treatment or access for myself or others.

3.27 I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.

3.28 I will advise employees of any connection, as defined at Section 5, I may have to a matter, when seeking information or advice or responding to a request for information or advice from them.

3.29 I will not participate in certain decisions concerning Council Tax if I am in arrears of two months or more in respect of the payment of Council Tax.

Appointments to Outside Organisations

3.30 If I am appointed or nominated by the Council as a member of another body or organisation, I will abide by the rules of conduct and will act in the best interests of that body or organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of that body or organisation.

3.31 I accept that if I am a director or trustee (or equivalent) of a company or a charity, as a nominee of my Council, I will be responsible for identifying, and taking advice on, any conflicts of interest that may arise between the company or charity and my council.

SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out what I have to register, when I am elected and whenever my circumstances change. The register will cover the period commencing from 12 months prior to, and including, my current term of office.

4.2 I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests, including a requirement that a councillor must register their registrable interests within one month of becoming a councillor, and register any changes to those interests within one month of those changes having occurred.

4.3 The interests which I am required to register are those set out in the following paragraphs. Other than as required by paragraph 4.23, I understand it is not necessary to register the interests of my spouse or cohabitee.

Category One: Remuneration

4.4 I will register any work for which I receive, or expect to receive, payment or reward. I have a registrable interest where I receive remuneration by virtue of being:

- a) employed;
- b) self-employed;
- c) the holder of an office;
- d) a director of an undertaking;
- e) a partner in a firm;
- f) appointed or nominated by my council to another body; or
- g) engaged in a trade, profession or vocation, or any other work.

4.5 I do not have to register any sums I receive in expenses, allowances or remuneration from my council for work I undertake in my capacity as a councillor.

4.6 I understand that if a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under Category Two "Other Roles".

4.7 I must register any allowances I receive in relation to membership of any organisation under Category One.

4.8 When registering employment as an employee, I must give the full name of my employer, the nature of its business and the nature of the post I hold in the organisation.

4.9 When registering remuneration from the categories listed in paragraph 4.4 (b) to (g) above, I must provide the full name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate.

4.10 Where I otherwise undertake a trade, profession or vocation, or any other work, I must include information about the nature of the work and how often it is undertaken.

4.11 When registering a directorship, I must provide the registered name and registered number of the undertaking in which the directorship is held and provide information about the nature of its business.

4.12 I understand that registration of a pension is not required as this falls outside the scope of the category.

Category Two: Other Roles

4.13 I will register any unremunerated directorships where the body in question is a subsidiary or parent company of an undertaking in which I hold a remunerated directorship.

4.14 I will register the registered name and registered number of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which I am a director and for which I receive remuneration.

Category Three: Contracts

4.15 I have a registrable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph [4.20](#) below) have made a contract with my council:

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

4.16 I will register a description of the contract, including its duration, but excluding the value.

Category Four: Election Expenses

4.17 I will register any single donation of more than £50, or any donations from the same source that together amount to more than £50, towards election expenses received by me, or on my behalf within the period commencing from 12 months prior to, and including, my current term of office.

Category Five: Houses, Land and Buildings

4.18 I have a registrable interest where I own or have any other right or interest in houses, land and buildings in Scotland, such as being an owner or a tenant, including a council tenant.

4.19 I understand I am only required to provide details of the council ward in which the property is located for the publicly available Register of Interests. I will, however,

provide the full address of the property to my council's Monitoring Officer (or their nominee), but understand this will be kept confidential.

Category Six: Interest in Shares and Securities

4.20 I have a registrable interest where:

- a) I own or have an interest in more than 1% of the issued share capital of the company or body; or
- b) Where, at the relevant date, the market value of any shares and securities (in any one specific company or body) that I own or have an interest in is greater than £25,000.

Category Seven: Gifts and Hospitality

4.21 I understand the requirements of paragraphs 3.13 to 3.20 regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

Category Eight: Non-Financial Interests

4.22 I may also have other interests and I understand it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non-financial interests are those which members of the public with knowledge of the relevant facts might reasonably think could influence my actions, speeches, votes or decision-making in my council (this includes its Committees and memberships of other organisations to which I have been appointed or nominated by my council).

Category Nine: Close Family Members

4.23 I will register the interests of any close family member who has transactions with my Council or is likely to have transactions or do business with it.

SECTION 5: DECLARATION OF INTERESTS

Stage 1: Connection

5.1 For each particular matter I am involved in as a councillor, I will first consider whether I have a connection to that matter.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

5.3 A connection includes anything that I have registered as an interest.

5.4 A connection does not include:

- a) being a Council Tax or rate payer or a council house tenant or in general when services delivered to members of the public are being considered, including the setting of budgets, taxes and rates and fixing of council house rents;
- b) being a councillor when councillors' remuneration, allowances, expenses, support services or pensions are being considered; or
- c) being a member of an outside body to which I have been appointed or nominated by my council as a councillor representative unless:
 - (1) the matter being considered by my council is quasi-judicial or regulatory; or
 - (2) I have a personal conflict by reason of my actions, my connections or my legal obligations.

Stage 2: Interest

5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

Stage 3: Participation

5.6 I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.

5.7 I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.

5.8 I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the

dispensation is sought and that I cannot take part in any discussion or decision-making on the matter in question unless, and until, the application is granted.

SECTION 6: LOBBYING AND ACCESS

6.1 I understand that a wide range of people will seek access to me as a councillor and will try to lobby me, including individuals, organisations, companies and developers. I must distinguish between:

- a) my representative role in dealing with constituent enquiries;
- b) any community engagement where I am working with individuals and organisations to encourage their participation and involvement; and
- c) lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my council (for example contracts/procurement) or who are applying for a consent from my council.

Constituent enquiries

6.2 I will comply with data protection legislation, which includes keeping the personal information of any constituent secure and only, in general, using it for the purpose of assisting with the enquiry. I will seek the constituent's consent in advance if I am in a multi-member ward and feel it is more appropriate for another councillor to handle the enquiry. I note that there may be circumstances in which it is best not to respond to a constituent, and that I am not obliged by the Code to respond to every contact.

Community engagement

6.3 I will undertake such work in an open and transparent manner. I will not express an opinion on a quasi-judicial or regulatory application that I might later be asked to determine. I accept that if I do express such an opinion, I will have to declare an interest and will not be able to take part in the decision-making.

Lobbying

6.4 In deciding whether, and if so how, to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to influence my, or my council's, decisions.

Lobbying in Quasi-judicial or Regulatory Matters

6.5 If I am approached directly by an individual or organisation who is seeking to do business with my council or who is involved in a quasi-judicial or regulatory matter (such as an applicant or an objector),

I WILL:

- a) have regard to Section 7 of this Code;
- b) advise that individual or organisation that I cannot formulate an opinion or support their position if I am going to take part in the decision-making on the matter; and

- c) direct any representations I receive to the appropriate council employee or department.

I WILL NOT:

- d) lobby or otherwise exert pressure or influence on employees, other councillors, or members of a quasi-judicial or regulatory committee, to recommend or make a specific decision in respect of a quasi-judicial or regulatory matter. I understand that I am entitled to seek information from employees but that I must not lobby them, to either make or recommend a particular decision.
- e) use political group meetings to decide how I and other councillors should vote on such matters or on individual staffing issues, such as the appointment or discipline of an employee.
- f) comply with political group decisions on such matters if these differ from my own views.

 SECTION 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS

Introduction

7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.

7.2 I will deal with many types of quasi-judicial or regulatory applications. Depending on the type of application that is made, there will be often be a formal, statutory decision-making process for its consideration and outcome. There may also be formal legal routes to challenge decisions made on these applications and for this reason I must be aware that my own personal responsibility to ensure a proper and fair hearing has wider consequences for my council's reputation and financial liabilities in the event of any challenge.

7.3 Quasi-judicial or regulatory decisions typically involve:

- a) Planning or other applications in terms of planning legislation;
- b) Applications for alcohol licensing matters;
- c) Applications for betting and gaming premises;
- d) Applications for taxi licences and all other forms of civic licensing;
- e) Actions where my council is involved in any form of statutory enforcement procedure;
- f) Any actions where my council is an employer and is involved in any disciplinary issues that I may have a remit to deal with;
- g) Any procedures for statutory approval or consent involving my Council and where I have a remit to deal with the matter;
- h) Any appeal procedure where my council has a role and where I am expected to adjudicate on applications, for example an Education Appeals Committee for school placements or school exclusions.

The above list is provided to me only for guidance and is not exhaustive. If I have any doubt as to whether or not my involvement involves a quasi-judicial or regulatory matter I will seek the advice of my council's Monitoring Officer.

Quasi-Judicial and Regulatory Matters

7.4 In dealing with these applications,

I WILL:

- a) throughout my involvement with the entire application process act fairly and be seen to act fairly;
- b) declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined;
- c) deal fairly and impartially with all parties involved in the application;
- d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;
- e) take into account professional advice given to me by council employees; and
- f) seek advice from the relevant council employee if I am in doubt as to any material or relevant considerations.

7.5 In dealing with such applications,

I WILL NOT:

- a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;
- b) indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered;
- c) in advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am prejudiced in my decision-making;
- d) lobby other councillors who may be dealing with the application;
- e) express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application;
- f) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered;
- g) express any indicative or provisional views in the course of my involvement in any aspect of the application; or
- h) otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly.

Policy and Strategy

7.6 My role in policy and strategic issues may have a very wide relevance to my council area. For example, I have a key role in establishing policies for the benefit of my council's area and I am fully entitled to express my genuinely held views or to advocate proposals for the adoption of key guidance. It is entirely appropriate that I can express my views on matters of such general importance to my council area.

7.7 When I am being asked to develop a policy and set a strategy that forms the framework under which individual applications may subsequently be decided, I understand that I can discuss or debate these items of policy or strategy. However, I will only take into account material considerations affecting the policy or strategic issue and will have regard to the requirement for the adoption of the policy or strategy to be based on facts and evidence.

7.8 For policy and strategic issues under which individual applications may subsequently be decided,

I WILL:

- a) be able to express my views;
- b) be able to advocate proposals that I consider to be of benefit to my council area;
- c) have regard to the evidence-base behind the formulation of the policy or strategy in question.

I WILL NOT:

- d) do anything or be motivated to do anything that is connected or linked in any way with my personal involvement in a policy or strategic issue;
- e) express any view that suggests I have a closed mind on the policy or strategic issue regardless of any material considerations affecting that issue.

Representation

7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application,

I WILL NOT:

- a) organise support for or opposition to the application in any way;

- b) represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) compromise myself or my Council by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of a Committee as a decision-maker but have been involved in organising support for or opposition to an application,

I WILL:

- a) declare an interest in the matter, and
- b) withdraw from the meeting without participating in the consideration of the matter.

7.11 In circumstances where I am a member of a Committee as a decision-maker but wish to represent individuals or groups who are seeking to make representations for or against an application,

I WILL:

- a) follow procedures agreed by my council which afford equal opportunity to any parties wishing to make representations to do so;
- b) declare an interest in the matter; and
- c) only remain in the meeting, while that item is being discussed, for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- d) participate or attempt to participate as a decision-maker in that application;
- e) attempt to influence employees to adopt any particular position relative to the matter; or
- f) lobby other councillors who may be involved in the decision-making process.

7.12 In circumstances where I am **not** a member of any Committee which is making a decision on an application, but wish to represent individuals or groups who are seeking to make representations for or against it,

I WILL:

- a) follow procedures agreed by my council which afford equal opportunity to any parties wishing to make representations to do so; and

- b) only remain in the meeting for that item for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I WILL NOT:

- c) participate or attempt to participate as a decision-maker in that application;
- d) attempt to influence employees to adopt any particular position relative to the matter; or
- e) lobby other councillors who may be involved in the decision-making process.

Site Visits

7.13 In respect of any site visits that have been decided upon or agreed by the Committee as a stage in the consideration of the application,

I WILL:

- a) follow my council's procedures for such visits as set out by my council and that with regard to any legislative requirements or notes of guidance or practice;
- b) remember that such site visits are part of the decision-making process and as such are formal in nature and may have procedures as set out by my council.

Enforcement

7.14 In my role, I may become aware whether by complaint or by direct knowledge of the need for council intervention by way of appropriate enforcement action. In this event, I will refer the matter for investigation to the appropriate service of my council.

I WILL ALSO:

- a) advise all subsequent enquirers to deal directly with the relevant employee of the Council department;
- b) be able to request factual information about the progress of the matter from the relevant employee.

I WILL NOT:

- c) lobby for a particular outcome;

- d) get involved in the operational detail of any enforcement actions which are subsequently taken by my council.

ANNEX A

PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES

Definitions

The reference to 'employees' below covers all employees and officers of councils and all officers and employees of any other body or organisation to which a councillor is appointed or nominated by the Council.

The reference to 'Convener' below covers all committee chairs and portfolio leads.

The reference to 'chief officers' covers all Chief Executives, Directors and Heads of Service.

The reference to 'committee' also covers all forms of executive and scrutiny operating models.

Principles

1. This protocol outlines the way in which councillors and employees should behave towards one another. It should be noted that while some scenarios are included, these are not exhaustive. The protocol should be treated, therefore, as applying in all situations where there is interaction between councillors and employees.
2. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position or influence.

Roles

3. Councillors are required to provide strategic leadership and oversight. This involves setting strategy and policy, scrutinising and making major, complex decisions that concern the Council as a whole. Councillors are not, however, responsible for operational management (being the planning, organising and execution involved in day to day activities) as this is the role of employees. Chief Executives and senior employees have ultimate responsibility to ensure that the Council meets its responsibilities.
4. Legally, employees are employed by the Council / other body and are accountable to it as an entity. Employees are responsible for serving the Council / other body as a whole, and not any particular political group, combination of groups or individual councillor. It is nevertheless appropriate for employees to be called upon to assist any political group in its deliberations or to help individual councillors fulfil their different roles (see the section on political groups below).

Office bearers

5. For the Council to perform effectively, it is important that there is a close professional working relationship between a committee convener and the director and other senior employees of any service reporting to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an employee's ability to deal with other councillors impartially, or the ability of a convener to deal with other employees impartially.
6. Conveners will have many dealings with employees. While employees should always seek to assist committee chairs, they are ultimately responsible to the relevant chief officer and not to any convener.
7. Conveners will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible, however, for the contents of any report submitted in their name and will always have the right to submit reports to councillors on their areas of professional competence. The Convener does not have a right to veto this course of action.
8. Conveners are recognised as the legitimate elected spokesperson on their committee's area of responsibility. Where authority is delegated to employees, they may choose to consult the relevant convener about any action they propose to take. The employee nevertheless retains responsibility for the final decision (as long as the delegated authority remains in place).

Political groups

9. Most councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must treat all political groups and individual councillors in a fair and even-handed manner and must maintain political neutrality at all times.
10. Employees can provide political groups with support (such as discussing matters with the convener and vice-convener before a committee meeting or presenting information to a group meeting). While, in practice, such support is likely to be most in demand from whichever political group is in control of the Council, it nevertheless should be available to all political groups. The advice given by employees to different party or political groups should be consistent.
11. Councillors and employees must act in accordance with the council's rules about the access and support to be provided to political groups (for example, that all requests must be approved by the Chief Executive).
12. Employee support for political groups must not extend beyond providing information and advice in relation to matters of council business. Employees should not be asked, or be expected, to be present at meetings or parts of meetings when matters concerning party business are being discussed. It is the responsibility of the convener of the political group meeting to ensure that all attending are clear on the status of the meeting and the basis on which any employees are present.

13. Councillors and employees must note that while political group meetings may form part of the preliminaries to council decision-making, political groups are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings are not council decisions and it is essential that they are not interpreted or treated as such.
14. Employees can provide information and advice in relation to matters of council business to political groups. Employees are nevertheless responsible for ensuring that all necessary information and advice is still provided to the relevant committee or sub-committee when the matter in question is considered.
15. Political groups must recognise that information and advice given by employees should be used to enhance discussion and debate at council and committee meetings. Such information or advice should not be used for political advantage (for example by issuing media briefings before a decision is made), as doing so could devalue the decision-making process and can place employees in a difficult position.
16. Employees should take special care when providing information and advice to a meeting of a political group where other individuals who are not elected members of the Council are in attendance, as such individuals will not be bound by the Councillors' Code (and, in particular, the provisions concerning the declaration of interests and confidentiality).
17. Employees must treat any discussions with a political group or individual councillor as being strictly confidential.
18. Any difficulties or uncertainty about the extent of advice and information that can be provided to political groups should be raised with the Chief Executive (who should then discuss the matter with the group leader).

Councillors as local representatives

19. Councillors should ensure they act in accordance with the provisions of the Councillors' Code and this protocol when performing such a role. Elected members must recognise that, when performing their local representative role, they are representing the Council. Employees must treat all councillors fairly and openly in their role as local representatives.

Communications

20. Employees should not normally copy any communications they have with an individual councillor to any other councillor, unless they have been clear in advance that they intend to do so (or this has been agreed).

Human resource issues

21. Where councillors are involved in the appointments of employees they must act fairly and openly, and make decisions solely on merit.

22. Councillors should not become involved in issues relating to any individual employee's pay or terms and conditions of appointment, except while serving on a committee tasked with dealing with such matters.

Social relationships

23. The relationship between councillors and employees depends upon trust, which will be enhanced by the development of positive and professional relationships. While councillors and employees may often find themselves in the same social situations, they should take care to avoid close personal familiarity as this can damage the relationship of mutual respect and the belief that employees can undertake their role in an impartial and objective manner. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

Public comment

24. Councillors and employees both have a responsibility to project a positive image of the Council and should avoid making any public comments that could bring it into disrepute.
25. Councillors should not raise any adverse matters relating to the performance, conduct or capability of employees in public. Employees must ensure they treat councillors with similar respect and courtesy.

Employees supporting councillors

26. Where councils arrange for employees to provide direct administrative or practical support for individual councillors to help them undertake their duties, particular considerations will apply. While councillors may ask employees to provide such support in a particular way, they must nevertheless remember that the employee is accountable to their line manager. Any issues about conflicting priorities, conduct or performance must be referred to the line manager.

ANNEX B

DEFINITIONS

"ALEO" means an arm's-length external organisation (ALEO), that is formally separate from the Council but is subject to the Council's control or influence. ALEOs can take many forms including companies, community enterprises, charitable organisations and trusts.

"Bullying" is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted.

"Chair" includes Committee Conveners or any other individual discharging a similar function to that of a Chair or Convener under alternative decision-making structures.

"Cohabitee" includes any person who is living with you in a relationship similar to that of a partner, civil partner, or spouse.

"Committee" includes all forms of executive and scrutiny operating models.

"Confidential Information" includes:

- any information passed on to the Council by a Government department (even if it is not clearly marked as confidential) which does not allow the disclosure of that information to the public;
- information of which the law prohibits disclosure (under statute or by the order of a Court);
- any legal advice provided to the Council; or
- any other information which would reasonably be considered a breach of confidence should it be made public.

"Election expenses" means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.

"Employee" includes individuals employed:

- directly by the Council;
- by any of the Council's arms' length external organisations;
- as contractors by the Council, any of the Council's arms' length external organisations; or
- by a contractor to work on any of the Council's premises.

“Gifts” a gift can include any item or service received free of charge, or which may be offered or promised at a discounted rate or on terms not available to the general public. Gifts include benefits such as relief from indebtedness, loan concessions, or provision of property, services or facilities at a cost below that generally charged to members of the public. It can also include gifts received directly or gifts received by any company in which the recipient holds a controlling interest in, or by a partnership of which the recipient is a partner.

“Harassment” is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. Harassment can be experienced directly or indirectly and can occur as an isolated incident or as a course of persistent behaviour.

“Hospitality” includes the offer or promise of food, drink, accommodation, entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.

“Relevant Date” Where a councillor had an interest in shares at the date on which they were elected, the relevant date is – (a) that date; and (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

“Remuneration” includes any salary, wage, share of profits, fee, other monetary benefit or benefit in kind.

“Securities” a security is a certificate or other financial instrument that has monetary value and can be traded. Securities includes equity and debt securities, such as stocks bonds and debentures.

“Undertaking” means:

- a body corporate or partnership; or
- an unincorporated association carrying on a trade or business, with or without a view to a profit.

ANNEX C

BREACHES OF THE CODE

Introduction

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the Act”) provided for a framework to encourage, and where necessary enforce, high ethical standards in public life.
2. The Act provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies, imposing on councils and relevant public bodies a duty to help their members comply with the relevant code.
3. The Act and the subsequent Scottish Parliamentary Commissions and Commissioners etc. Act 2010 established the Standards Commission for Scotland (“Standards Commission”) and the post of Commissioner for Ethical Standards in Public Life in Scotland (“ESC”).
4. The Standards Commission and ESC are separate and independent, each with distinct functions. Complaints of breaches of the Councillors’ Code of Conduct are investigated by the ESC and adjudicated upon by the Standards Commission.
5. The first Councillors’ Code of Conduct came into force in 2003. The Code has since been reviewed, and re-issued in 2010 to reflect legislative changes. The 2021 Code has been issued by the Scottish Ministers following consultation, and with the approval of the Scottish Parliament, as required by the Act.

Investigation of Complaints

6. The ESC is responsible for investigating complaints about councillors. It is not, however, mandatory to report a complaint about a potential breach of the Code to the ESC. It may be more appropriate in some circumstances for attempts to be made to resolve the matter informally at a local level.
7. On conclusion of the investigation, the ESC will send a report to the Standards Commission.

Hearings

8. On receipt of a report from the ESC, the Standards Commission can choose to:
 - Do nothing;

- Direct the ESC to carry out further investigations; or
 - Hold a Hearing.
9. Hearings are held (usually in public) to determine whether the councillor concerned has breached the Councillors' Code of Conduct. The Hearing Panel comprises of three members of the Standards Commission. The ESC will present evidence and/or make submissions at the Hearing about the investigation and any conclusions as to whether the councillor has contravened the Code. The councillor is entitled to attend or be represented at the Hearing and can also present evidence and make submissions. Both parties can call witnesses. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the councillor. If the Hearing Panel decides that a councillor has breached the Councillors' Code of Conduct, it is obliged to impose a sanction.

Sanctions

10. The sanctions that can be imposed following a finding of a breach of the Councillors' Code of Conduct are as follows:
- **Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the councillor concerned.
 - **Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the councillor is suspended from attending all meetings of the Council. Partial suspension means that the councillor is suspended from attending some of the meetings of the Council.
 - **Disqualification:** Disqualification means that the councillor is disqualified for the period determined (of up to 5 years) from being a councillor (which has the effect of removing them from office. Where a councillor is also a member of a devolved public body (as defined in the Act), other than as a representative or nominee of the Council, the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in Section 19 of the Act.

Interim Suspensions

11. Section 21 of the Act provides the Standards Commission with the power to impose an interim suspension on a councillor on receipt of an interim report from the ESC about an ongoing investigation. In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the councillor and will consider whether it is satisfied:
- That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the councillor may try to interfere with evidence or witnesses); or

- That it is otherwise in the public interest to take such a measure. A policy outlining how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so, should any such a report be received from the ESC can be found on the Standards Commission's website.
12. The decision to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a councillor, nor should it be viewed as a disciplinary measure.