



THE NHDC CODE OF CONDUCT

*Detailed Guide: what the Code means for
Councillors*

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FOREWORD BY THE CHAIRMAN OF THE NHDC STANDARDS COMMITTEE



I became the Chairman of the Standards Committee in July 2012 and this appointment was at a time of great change for the Standards regime. Among the most significant change was the requirement for each local authority to have its own code of conduct. The NHDC code has been updated by the Council over time and this edition is effective from 4 May 2018.

The key functions of the Committee include promoting high standards, preventing infringements of the Code and ensuring that appropriate advice is available to councillors as they manage their responsibilities under the Code. This Guide is an essential component of that arrangement.

As the Committee on Standards in Public Life indicated in their guidance on Ethical Standards for Providers of Public Services:-

“Whilst many of the requirements for high standards require action at an organisational level, high standards also require individuals to take personal responsibility - by observing high standards themselves, by demonstrating high standards to others through their own behaviour and by challenging inadequate standards when they see them.”

I would therefore encourage Councillors to take responsibility, use this Guide and promptly to seek advice from the Monitoring Officer if unsure of their position.

Councillor Mike Rice

Introduction

This Guide provides a general interpretation the Code of Conduct ('the Code') adopted by NHDC on 23 November 2017 and effective from 1 May 2018. Whilst the guide is not an exhaustive list of thing to do/not to do, its general aim is to: (1) provide advice for Councillors as they carry out their roles; and (2) set out issues that can be taken into account when any alleged breaches are considered, including those relating to Parish Councillors.

It has been prepared by the Monitoring Officer and Deputy Monitoring Officer in consultation with the Chairman of the NHDC Standards Committee, the Independent and Deputy Independent Persons appointed as part of NHDC's complaint handling arrangements. It has been approved by the NHDC Standards Committee.

This Guide takes into account the Department for Communities and Local Government's "*Openness and transparency on personal interests A guide for councillors*"¹ ('DCLG guidance'). It also refers to guidance provided by the Public Services Ombudsman (for Wales) in respect of Code of Conduct Complaints² in instances where the NHDC Code has similar provisions to that of the mandatory Welsh Code. In addition, it refers to case law or decisions, or the previous Standards Board Guidance where these remain relevant.

It should be noted that the statutory regulations about Disclosable Pecuniary Interests ('DPI'), may be subject to legal challenge in the future and, therefore, to changed interpretation. If that happens, this guide will be amended as necessary.

The full NHDC Code of Conduct is in section 17 of the Constitution on the Council's webpage and is appended to this Guide. Councillors should read both documents together.

<http://www.north-herts.gov.uk/home/council-and-democracy/council-constitution>

Note that the Code does not apply to the actions of Council as a whole, or to the conduct of its employees, which are covered by their contracts of employment, the NHDC Employee Code of Conduct, or, where relevant, their own professional body's code of conduct.

Any reference to "you" below refers to Councillors. A copy of the Code is appended to this Guide.

1 – 2: When does the Code of Conduct apply?

This is covered in the introduction to the Code under paragraphs 2.1 -2.4.

The Code applies to all NHDC Councillors, voting and non-voting. It applies to all meetings of the Council, **including informal meetings** with Officers and other Councillors, when conducting Council business, acting, claiming *or giving the impression that they are acting* as an NHDC Councillor. **This means that a Councillor cannot pick and choose when it applies.**

¹ <https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors> 2013.

² The Code of Conduct for members of local authorities in Wales Guidance from the Public Services Ombudsman for Wales for members of county and county borough councils, fire and rescue authorities, and national park authorities reissued March 2015.



For example, if a Councillor is a Director or Trustee of an external body and the Councillor attends an informal or formal meeting convened or arranged by the Council and where Council business is being conducted, *then the Councillor is still bound by the Code* and must act accordingly, even if they are attending the meeting, or believe they are attending in their capacity as Trustee/Director. This is likely to create a conflict of interest in those roles and a Councillor is advised to make the necessary declarations and withdrawal from meetings as per the Code. This is because there are legal duties toward the outside body (See below and “**Guidance to Councillors on Outside Bodies**” for further information).

Be aware that the Code may be applied if a Councillor is convicted of a criminal offence, or they have accepted an out of court disposal³, during their term as a Councillor, *as the conduct for which such penalties were imposed could amount to conduct that brings the Councillor, the office or NHDC into disrepute.*

Which Code of Conduct applies if a Councillor is on more than one authority/ body or if a Councillor represents NHDC on another body or authority?:

If a Councillor is a Councillor of more than one authority, then the Councillor must abide by the Code of Conduct that *applies to the authority whose business is being carried out at the time.* So for example, a member of the County Council will be bound by the County Council's Code of Conduct when carrying out their business. If a Councillor is then conducting District business s/he will be bound by the NHDC Code and should follow that.

Again, if a Councillor is a Trustee or Director of an external body, then there are a number of legal duties to that Trust/Company and there is a duty to act in the best interests of that body. That responsibility is likely to, or may conflict with the duty that a Councillor has to residents of the District as a whole and the Council's objectives. Such a conflict is likely to affect the ability to participate or deal with any Council business linked to that Trust or Company whose governing body a Councillor sits on. Advice should be sought from the Monitoring Officer before taking on this dual role and in any event note the potential conflict and act appropriately under the Code when dealing with Council business. (See paragraph 4 below and **Guidance to Councillors on Outside Bodies**⁴)

Does it apply to co-opted Councillors of the District Council and to Parish Councillors?:

The simple answer is yes.

**PART 1
RULES OF CONDUCT**

3: General Obligations

3.1 Obligation to comply with the code

There is a general obligation placed on all Councillors to comply with the requirements of the code.

3.2 Duties and Responsibilities:

(a): Equality

³ To include: simple caution, a conditional caution, any appropriate regulatory proceedings, a punitive or civil penalty, or prosecution-related disposal.

⁴ <http://intranet.north-herts.gov.uk/home/directorates-and-members/support-members>

This paragraph states that Councillors must: ***“carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their race, pregnancy and maternity, gender reassignment, marriage or civil partnership, disability, sex or sexual orientation, age, religion or belief.”***

Grounds of discrimination⁵:

It is unlawful to discriminate against anyone because of:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

These are called ‘**protected characteristics.**’ They are enshrined in legislation.⁶ People are protected against such discrimination at, for example, work or when using public services. The potential discrimination situations arise when Councillors deal with NHDC employees or with the public/public’s use of the Council’s services.

Types of discrimination:

Discrimination comes in one or more of these four forms:

- **Direct** discrimination - Treating someone with a protected characteristic less favourably than others. *For example* not co-opting a Councillor because they “won’t fit in” with the rest of the Councillors, when that reason relates to a protected characteristic.
- **Indirect** discrimination - Putting rules, arrangements, policy or a way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified. *For example* routinely arranging meetings at times when it would be more difficult for someone with responsibility for children to attend, compared with others without such responsibility.
- **Harassment** - Unwanted behaviour linked to a protected characteristic that violates someone’s dignity or creates an offensive environment for them. Unwanted conduct includes the spoken or written word, jokes or other behaviour. *For example*, unwanted sexual advances or making rude or degrading or offensive remarks connected to a relevant protected characteristic.
- **Victimisation** - Treating someone unfairly because they complained about discrimination or harassment. *For example* a member of staff has put in a complaint relating to discrimination and is then treated differently by members of an appointment panel because of that complaint when s/he applies for a more senior role.

It can be lawful to undertake some positive action for people with protected characteristics, if they are at a particular disadvantage, have a particular need or are under-represented. (For example a refuge for abused women can be set up just for women and children). However, these are generally policy-led actions. Before taking any of these types of decisions Councillors

⁵ See: Equality & Human Rights commission: <https://www.equalityhumanrights.com/en/equality-act/equality-act-faqs>

⁶ The Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/contents>

should be mindful of any advice provided in reports or the equality impact assessments. Or if still unclear, Councillors can ask the Monitoring Officer for further advice.

3.2(b): Not to cause the authority to breach equalities legislation

This paragraph states that Councillors must: “*not do anything which may cause the authority to breach equalities legislation*”. Equality laws impose positive duties on public bodies, including certain local authorities, to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, NHDC may be liable for any discriminatory acts that a Councillor has committed when they act in their official capacity. Councillors must therefore be careful not to act in a way that may amount to any of the prohibited forms of discrimination, or to do anything that hinders NHDC’s fulfilment of its obligations under equality laws. Such conduct may cause the authority to break the law, result in the Council having to pay substantial compensation and a Councillor may become the subject of a complaint that the Code has been breached.

3.2(c): Show respect and consideration

This paragraph states that Councillors must: “*show respect and consideration for others.*” Such conduct is also linked to observation of the **Protocol for Member/Officer Working Arrangements** (in Section 18 of the Constitution) and effective working relations.

Respect for/from other Councillors:

In politics it is recognised that there will be political rivalries and either formal political party or informal alliances even within those groups. Each political group will campaign for their ideas, and, as part of democratic debate, they may also seek to discredit the policies and actions of their opponents. Discussions may become heated. This is part of the rough and tumble of political life and does not in itself (when directed at other Councillors) amount to failing to treat someone with respect (or indeed bullying – see 3.2(d) below). Freedom of expression is a right currently protected under Section 12 of the Human Rights Act 1998⁷. It is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others. Case law⁸ has supported the contention that a Councillor’s freedom of expression attracts *enhanced protection* when the comments are of political, public administration and public concern, including when the comments relate to the manner of performance of public duties. This means that if a Councillor criticises another Councillor publicly about their actions or performance then this is *unlikely* to be seen as disrespectful as they are expected to have “thicker skins” [Note comments below relating to officers].

If a Councillor uses inappropriate language or is disrespectful to another Councillor during a debate, it may not amount to disrespect or bullying because a platform is present for the other Councillor to defend him/herself. On the other hand, if the comments do not relate to political, public administration or a linked area of public concern, but are instead personal attacks on an individual Councillor, then they may amount to a breach of this provision in the Code.

Where complaints have been made from within a particular political group towards another Councillor *of that same group*, then the Monitoring Officer would look to (and expect) the Leader of that group to deal with this in the first instance, within party rules or processes. Equally, inter-group complaints should ideally be dealt with between respective leaders of those groups. This

⁷ Which transposed the European Convention on Human Rights – Article 10 being Freedom of Expression

⁸ Heesom v Public Services Ombudsman for Wales Queen’s Bench Division (Administrative Court) 15 May 2014

does not mean that the Council would not consider such complaints, but that internal procedures should be the quickest, and in most cases, the most appropriate approach to take.

Respect for/from the public and NHDC employees:

Treating and being seen to treat others with respect is a significant issue. Whilst it is recognised that some members of the public can make unreasonable demands of Councillors, Councillors should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's confidence in its representatives. Members of the public should not be subjected to personal attack or criticism. If it occurs then the Councillor responsible it is likely to be in breach of this paragraph of the Code.

Where employees are concerned, the position could be said to be between that of a member of the public and another Councillor (dependent on the employee's position). Ideas and policies may be robustly criticised by other Councillors or the public, but Councillors should not subject individual employees to personal attacks. It is acknowledged that Councillors are elected to represent the public and they may be unhappy with the way a report or action has been undertaken by an employee. As indicated above, Councillors do have a degree of enhanced protection for certain comments made publicly, as the Judge in the case of Heesom⁹ found:

“Civil servants are, of course, open to criticism, including public criticism; but they are involved in assisting with and implementing policies, not (like politicians) making them...it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration...it is appropriate that their actions and behaviour are subject to more thorough scrutiny. However, the limits are not as wide as for elected politicians, who come to the arena voluntarily and have the ability to respond in kind which civil servants do not...Where critical comment is made of a civil servant, such that the public interest in protecting him as well as his private interests are in play, the requirement to protect that civil servant must be weighed against the interest of open discussion of matters of public concern and, if the relevant comment was made by a politician in political expression, the enhanced protection given to his right of freedom of expression...”

So whilst Councillors may wish to criticise employees in public, they should not publically attack an employee in a personal manner. They should channel any criticism of perceived failures and/or conduct through a line manager or the Head of Paid Service (the Chief Executive) for consideration, rather than publicly “naming and shaming” in a way that could be seen as disrespectful and/or demeaning to that employee. Failure to follow this process would be seen as a potential breach of the Code.

Finally it is worth noting that Chairs of meetings have a role to play in Council meetings and are expected to apply the rules of debate and procedure or standing orders to prevent abusive or disorderly conduct (from Councillors and the public). That does not mean that legitimate debate should be stifled, but that personal attacks must be countered where possible and meetings brought to order.

3.2(d): Do not bully or harass

This paragraph states that Councillors must: **“not bully or harass any person”**.

⁹ *Ibid* – para 42.

The Public Services Ombudsman for Wales' Guidance ('PSOW')¹⁰ refers to a similar provision and describes bullying in identical terms to the old Standards Board for England Guidance on Bullying and Harassment as:

"Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence."

"Harassment is repeated behaviour which upsets or annoys people."

As the ACAS advice indicates:

"Bullying or harassment can be between two individuals or it may involve groups of people. It might be obvious or it might be insidious."

The various relevant guides above point out that conduct does not have to be face-to-face interaction to amount to bullying. It can involve behaving in an abusive or threatening way, or making allegations about people in public, in Council meetings, in the company of their colleagues, through the press, in emails, blogs or other forms of social media.

Bullying behaviour that attempts to undermine an individual or a group of individuals, can be detrimental to the individual's confidence and capability, and may adversely affect their health. It matters because it affects the morale of employees and the working atmosphere. If employees complain they are being bullied or harassed by a Councillor then notwithstanding the Code, they may have a grievance against the authority, which can result in long periods of leave for ill health/stress or a claim against the Council and/or compensation being paid.

When considering allegations of bullying and/or harassment, the relevant Officers and (if applicable) the Standards Committee will consider the perspective of the alleged victim, their seniority, the forum and whether an objective person would have considered the actions to be bullying or harassing. As the PSOW indicates in their Guidance¹¹:

"You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances but the relative seniority of the officer will be a factor in some cases."

It is worth considering that if a Councillor makes insulting or malicious comments about an employee in public that this may be viewed as bullying because the employee is not able to defend him/herself in the same way in that forum. This can be contrasted, as indicated above, with legitimate challenges that a Councillor can make when questioning policy or scrutinising performance. An example of this would be debates in the Council meetings about policy, or asking employees to explain the rationale for the professional opinions they have put forward. A Councillor is entitled to challenge fellow Councillors and employees as to why they have come to a particular conclusion, but should do so in a manner that is not offensive or demeaning.

¹⁰ The Code of Conduct for members of local authorities in Wales Guidance from the Public Services Ombudsman for Wales for members reissued 1 April 2016

¹¹ Ibid.

Whilst some behaviour may not be bullying there is an overlap between this and failing to show respect. So even if disrespectful, intimidating or demeaning behaviour does not amount to bullying it may still be a breach of the Code by failing to treat others with respect.

Councillors should consider their actions and whether a neutral third party with all the facts would regard the conduct as bullying. In some instances it may be a case of over-sensitivity to criticism or a breakdown in a relationship between an employee and Councillor without an indication of any bullying.

Rather than publicly criticising officers, e.g. at a meeting or via social media, it is important that a Councillor raises issues about performance with a line manager in accordance with approved processes. The PSOW Guidance usefully states:

“Local Authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.”

Again, Councillors are also referred to the **Protocol for Member/Officer Working Arrangements** in Section 18 of the Constitution, which provides a framework for working relations with employees and further guidance on appropriate ways to interact.

3.2(e): Do not compromise the impartiality of people who work for or on behalf of NHDC

This paragraph states that Councillors must: ***“not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the authority.”***

This means that a Councillor should not approach or pressure anyone who works for, or on behalf of the Council (including contractors), to carry out his or her duties in a biased or partisan way. Employees must carry out their duties in an impartial way and should not be compelled or persuaded to act in a way that would undermine their neutrality.

For example, a Councillor should not put pressure on an employee to change their conclusions in their reports to Cabinet, Committees or Council, so that they accord with a political position. This does not mean that an employee will not be expected to take policies of a majority group through the democratic decision making process. It will mean though that, for example, in Regulatory or Administrative Committees (like Planning) employees will be expected to come to their own professional conclusions on the merits of applications. They must not be pressured to change these for any purposes that are not material in planning terms.

A Councillor should not provide or offer any incentive or disincentive or reward in return for acting in a particular way or reaching a particular decision. Of itself this may also contravene other legal requirements, such as under the Bribery Act 2010 – see below.

Councillors can robustly, but courteously, question staff (as stated above) in order to understand their reasons for proposing to act in a particular way, or the content of a report that

they have written. In doing so a Councillor must not try to force an employee to act differently, change their advice, or alter the content of that report. If they do so it could be seen to be a breach of this paragraph of the Code.

3.3: Information

3.3(a): Do not disclose confidential information

This paragraph states that a Member must not:

(a) disclose confidential information or information which could reasonably be regarded as being confidential, without the express prior consent of a person authorised to give such consent, or unless required by law to do so;

What is confidential information – paragraph 3.3(a):

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

Information is confidential if:

- the nature of the information is sensitive or personal;
- it was obtained in a way which implied it should be kept confidential;
- disclosing the information would be detrimental to the person/body who wishes to keep it confidential (for example it is a business secret);
- the Council or Committee has voted to treat the information as exempt, or the documents have been marked confidential/or sent with an email marked as such, then a Councillor should treat it as confidential. This will be because of a specific legal exemption.¹²

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

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

¹² For example under the Local Government Act 1972 such as information relating to an individual or indent which would be covered by Data Protection; financial or business affairs; negotiations; legal professional privilege; prevention, investigation or prosecution of crime.



Whilst (a)-(c) above are fairly self-explanatory and reasonably easy to determine or prove, (d) is considered in greater detail below:

- **The disclosure is reasonable:** this is a matter of judgement; however, when considering whether to make a disclosure (or indeed whether there has been a breach of the Code) the following issues should be considered:
 - Whether it is true/they have reasonable grounds for believing it to be true. If a Councillor does not have reasonable grounds for believing it is true, then the disclosure is unlikely to be reasonable.
 - The reason for the disclosure. If there is any personal gain for the Councillor from the disclosure (financial or position/role), then it is unlikely to be reasonable.
 - The identity of the person/body that the disclosure has been made to will also be important. It may be reasonable to disclose to a legal adviser or a regulatory body or person (such as the Auditors or the Police), but not to the world at large through the media.
 - The extent of information disclosed. The inclusion of unnecessary detail is unlikely to be reasonable. Even where disclosure is reasonable in the circumstances, if the extent of the material disclosed is disproportionate to the purposes of the disclosure, excessive disclosure could amount to a breach.
 - The seriousness of the potential harm caused by non-disclosure, the more likely it is that the disclosure will be reasonable. Note, however, that Councillors are encouraged to use the Council's **Whistleblowing Policy** procedures to report any concerns in the first instance.
 - The timing of the disclosure. If the matter to which the disclosure relates to has already occurred, and is unlikely to reoccur, then the disclosure is less likely to be reasonable than if the matter is continuing or is likely to occur again.
 - Whether the disclosure would amount to your authority failing in a duty of confidentiality to another person – if so, disclosure is more likely to be unreasonable.
- **The disclosure must be in the public interest and in good faith:** information is in the public interest if the public interest in disclosure **would outweigh** the **public interest** in keeping the information confidential AND if:
 - There are reasonable grounds for believing that a criminal offence has been committed.
 - The authority has or is about to fail to comply with its legal obligations.
 - There are reasonable grounds for believing that a miscarriage of justice has or is likely to occur.
 - A person's health and/or safety is in danger.



- The environment is likely to be damaged, and/or
- Information about any of the issues above is deliberately concealed.

The disclosure must be made **in good faith**: the disclosure will not be justified if it is being made to promote the Councillor's interests or is for political advantage.

This will also be considered as against the individual circumstances. If, for example, the Council is acting on an issue or is in the process of acting (for example considering enforcement proceedings, or bringing a prosecution) – and disclosure may prejudice such action, then it is unlikely that the release of information will be in the public interest.

- *The disclosure would not be in contravention of NHDC's reasonable requirements*: in addition to considering requirements in the bullet points above, before considering releasing confidential information a Councillor must ensure that s/he complies with NHDC's policies and protocols on matters such as the '**Whistleblowing Policy**' or '**Protocol for Member/Officer Working Arrangements**'. The Councillor should raise concerns regarding Council activities under the Whistleblowing Policy with the Council's Monitoring Officer rather than disclose confidential information. The concern will be assessed and possibly investigated under the Whistleblowing Policy. This enables the Council to consider a situation quickly. If serious the Monitoring Officer is likely to refer this to the NHDC auditors or the Police.

Reasonable requirements also cover statutory matters, such as information within a Committee, Cabinet or Council report that has been marked as exempt, and marked not for publication under one of the exempt information categories under Schedule 12A, Part 1 of the Local Government Act 1972. If a Councillor sees a report that s/he believes should not be marked in this way prior to the meeting, they should raise their concerns through the appropriate channels (the report Officer, the Chief Executive or Monitoring Officer). Ultimately if this is a report going to a Council meeting, it will be for the Councillors to decide whether this is dealt with in confidential session – and a Councillor should wait for that decision and abide by it, until or unless they are informed that the information is no longer confidential.

Councillors are also referred to Section 15 of the Constitution which deals with the "**Access to Information Rules**".

3.3(b): Do not prevent access to information a person is entitled to by law

This paragraph states that a Councillor must not "**(b) prevent any person from gaining access to information to which that person is entitled by law.**"

This includes information, for example, that a member of the public has a right to access under the Data Protection Act 1998 or the Freedom of Information Act 2000/Environmental Information Regulation 2004. Guidance on these information access regimes is available to all Councillors and staff via the intranet and can also be found on the Information Commissioner's Office website: <https://ico.org.uk/>

As a general rule, a Councillor should assume that documents (including emails) produced as part of their role can be disclosed. If the Council receives an information request (from any party) this will be reviewed and a Councillor may be asked for this information. If a Councillor

refuses to supply this information, it may be a breach of the Code. The relevant officer considering the request will consider if any exemption or exception to disclosure applies, but will be bound to follow the legal requirements. It is worth noting that destroying requested information outside of a public authority's normal policies is unlawful and may be a criminal offence if done to prevent disclosure¹³. Therefore, failure to comply with a request for such information is likely to be considered a breach of this paragraph of the Code.

3.4: Conduct

3.4(a): Do not bringing your office or the authority into disrepute

This paragraph states that a Councillor must: ***“not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.”***

Disrepute refers to conduct by an individual that can reasonably be regarded as lowering/damaging the reputation of the authority in the eyes of the public.

A Councillor's actions are subject to greater scrutiny than those of the public. Councillors should be aware that the actions they undertake in their public and private life might have an adverse impact on their office or NHDC. Dishonest and deceitful behaviour by a Councillor may bring the authority into disrepute, as may conduct in a Councillor's private life which results in a criminal conviction, or other out of court disposal, for such as, but not limited to, dishonest, threatening or violent behaviour.

There is also an inter-relation between the obligation under this paragraph of the Code and others. For example, if a Councillor discriminates against someone, then they may also be seen to have brought him/herself or the authority in to disrepute. Equally the manner in which a Councillor conducts him/herself in public or on social media can have an impact on public perception. For example, personalised attacks on NHDC employees could be seen as bullying and bringing the Councillor into disrepute.

3.4(b): Do not make vexatious, malicious or frivolous complaints

This paragraph states that a Councillor must: ***“not make vexatious, malicious or frivolous complaints against other Councillors or anyone who works for, or on behalf of, the authority.”***

There is no specific English case law on such wording in Code of Conduct complaints. However, there is a similar paragraph in the Welsh Code of Conduct¹⁴ and PSOW¹⁵ has provided a useful indication of what this means:

“...has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate. Making vexatious, malicious or frivolous complaints is **not only a breach of this paragraph but may also be contrary to your other obligations under the Code** such as the requirement not to bring your position as councillor into disrepute or not to use your position for an improper purpose.”

The PSOW Guidance also states:

¹³ Section 77 FOIA 2000 potential offence if someone alters, defaces, blocks, erases, destroys or conceals any record held by the public authority with the intention of preventing disclosure.

¹⁴ Paragraph 6(1)(d).

¹⁵ Guidance from the Public Services Ombudsman for Wales re-issued 1 April 2016



*“The Code should not be used by members to pursue their political or private differences. You should also **avoid making complaints which have little or no substance** (frivolous complaints) which are **designed mainly to annoy the person complained about.....they can create a negative impression of those members and councils and generally harm public confidence in our elected members....”***

Allegations against staff or other Councillors should be dealt with under the normal channels, with applicable complaints made to the line manager or internally to a group Leader or the Monitoring Officer. Equally, Councillors should not repeatedly or publicly make complaints against staff or other Councillors because a previous complaint was not upheld.

In summary a vexatious, malicious or frivolous complaint/complaints are those motivated by malice (a desire to do them harm), or by political rivalry. They may be designed to disadvantage another Councillor or member of staff and the evidence of misconduct/administrative failings is weak or non-existent. Repeated complaints regarding another Councillor or member of staff (on a particular issue or indeed multiple issues) and/or pre-airing in public of the complaints could also be considered a breach of this paragraph of the Code.

3.4(c): Comply with any request of the authority's Monitoring Officer, section 151 Officer or Head of Paid Service in connection with a statutory inquiry or investigation

This paragraph states that a Councillor must: ***“comply with any request of the authority's Monitoring Officer, or section 151/Chief Finance Officer, or Head of Paid Service in connection with an inquiry or investigation conducted in accordance with their respective statutory powers.”***

There is a similar provision in the mandatory Welsh code and some useful guidance provided by the PSOW:

*“This means that you should **reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents.** It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved.”*

Allowances will be made for urgent pressures and arrangements previously made, (for example, for holidays). However, priority should be given to the investigation, whether conducted by the statutory officers themselves or by others on their behalf. The aim will be to complete any investigation and final report within 3 months of the date on which it was commissioned and, if applicable, for a hearing of the complaints to be arranged within 3 months of the final report being sent to the Councillor. This prevents matters from being unnecessarily drawn out.

The requirement to co-operate with an investigation applies whether the Councillor is a witness or the subject of the investigation. It can apply at any stage of the investigation or be applied once the report has been prepared and following this if a Councillor fails to co-operate with attempts to list a hearing.

3.5: Use of your Position

3.5(a): Do not use or attempt to use your position improperly for your or any other person's advantage or disadvantage

This paragraph states that a Councillor *must not*: “(a) ***in your official capacity or otherwise, use or attempt to use your position improperly to confer on, or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;***”

In simple terms this means that Councillor should not use or attempt to use their public office for their own or anyone else's personal gain or loss. That does not mean that a Councillor cannot speak on local matters as an advocate, and represent the concerns of the community. It does, however, mean that a Councillor should be aware of any interest that they have and act appropriately according to other paragraphs of the Code. For example, if a Councillor has a Declarable interest in a planning application, that Councillor may still speak if the public can speak, but should make sure s/he then leave after those public speeches are complete.

This paragraph also overlaps legislative requirements, such as the Bribery Act 2010 which applies to Councillors carrying out public function. Councillors should be mindful of the NHDC **Anti-Bribery Policy**, this is part of the suite of policies that the Council has to counter-act fraud and corruption, and is available on the internet:

<http://www.north-herts.gov.uk/home/council-performance-and-data/policy/anti-fraud-corruption-policy>

If a complaint is made that could amount to a criminal offence under the Bribery Act 2010 then it is likely to be referred to the Police.

3.5 (b): Use of the Council's resources

This paragraph provides that a Councillor must not “***use or authorise others to use resources: (i) imprudently; (ii) in breach of the authority's requirements; (iii) unlawfully; (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority, or of the office to which you have been elected or appointed; (v) improperly for political purposes; or (vi) improperly for private purposes.***”

Council resources – imprudently, in breach of requirements, unlawful, discharge of functions 3.5(b)(i)-(iv)

Resources include any NHDC provided or financed computers, IT facilities, transport, printers, stationery, parking or support from NHDC employees (or contractors undertaking Council services). It includes the Council's offices and facilities. A Councillor should use these resources for carrying out Councillor business or business authorised by the authority ONLY. A Councillor should be familiar with relevant Policies and Protocols (such as **Information Security, Internet and Email Policy** and the **Protocol for Member/Officer Working Arrangements**) to ensure that the use of any relevant equipment is prudent, in accordance with NHDC requirements, lawful and for the Councillor's role as an elected official (and complies with any user agreement). These are available on the Intranet (with the Protocol in Section 18 of the Constitution on the internet).

Improperly for political purposes – 3.5(b)(v)



It is accepted that party politics has a proper role to play in both NHDC business and Councillor duties. Party political groups represented on the Council may make reasonable use of Council building for group meetings. It is, of course, permissible to use Council equipment to send internal emails on group issues.

There are, however, particular issues with publicity and the use of resources around election time (known in Hertfordshire as the Pre-Election Restricted Period, “PERP”). The Councillor should therefore consider this and have regard to **The Code of recommended practice on Local Authority Code of Publicity**, which supplements the prohibition¹⁶ on the use of local authority publicity to promote or affect support for a political party. The Council is not allowed to give financial or other support or assistance for publicity¹⁷ to an individual or party. Therefore if a Councillor is found to have used Council resources in this way, or put pressure on NHDC employees/contractors to do so, then it is likely to be a breach of this paragraph of the Code and Council Policies.

Improperly for private purposes- 3.5(b)(vi)

This includes, for example, a prohibition on using NHDC resources in relation to a Councillor’s business or employment, or by a member of the family or other personal associate.

There may be circumstances where NHDC authorises a small degree of use for private purposes, for example, the use of a council issued mobile phone to make personal calls, or computer for emails. A Councillor must, however, be aware of any restrictions placed on use to ensure that the authority does not incur any cost arising from personal usage (including any requirements to reimburse NHDC for those costs).

3.6: Decision making

3.6: (a) make a decision on the basis of merit, in the public interest, give reasons having regard to Statutory Officers’ advice

This paragraph states that a Councillor must:

“(a) when participating in meetings or reaching decisions that are the business of the authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the authority’s Statutory Officers listed below— (i) the Head of Paid Service; (ii) the s.151 Officer/Chief Finance Officer; (iii) the Monitoring Officer/Chief Legal Officer;

and give sufficient reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.”

‘Merits’:

This means consider all the arguments and points, for and against, before reaching a decision.

“Having regard to any relevant advice”:

There was similar wording in the old mandatory Code which remains in the Welsh mandatory version. This can be a complex and challenging issue as Councillors will have their opinion and may believe they are correct and that officers are wrong.

¹⁶ In section 2 Local Government Act 1986. The Code March 2011 made under the Local Government Act 1986.

¹⁷ “Publicity” means any communication, in whatever form, addressed to the public at large or to a section of the public.



According to old and current guidance on such wording this means that if a Councillor seeks advice, or advice is offered (for example, on whether or not the Councillor has a DPI or Declarable Interest), that it:

“goes beyond a requirement to simply consider the advice and reject it if it is not welcome”

It means also that Councillors are expected to follow this advice unless there are:

“strong reasons not to do so and where a decision is made not to follow advice it is highly advisable to record the reasons for not doing so.”

In simple terms, “*having regard to*” means **being consistent with and following advice**. If a Councillor has not done so, then a Councillor **should be able to show cogent reasons why the advice was not followed** – not simply because a Councillor did not agree with it. If a Councillor fails to do this then it could be a breach of this paragraph of the Code.

“Give sufficient reasons”:

Giving reasons for decisions is particularly important in relation to regulatory decisions (Planning & Licensing) and decisions where people’s rights are affected, but it is not confined to these. As indicated by the PSOW:

“As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.”

3.6: (b) act reasonably and not prejudice or demonstrate bias in respect of decisions

This paragraph states that a Councillor must:

“(b) act reasonably and not prejudice or demonstrate bias, or be seen to prejudice or demonstrate bias, in respect of any decision.”

It is important that Councillors approach all instances of decision making, particularly when participating in meetings of the Council, with an open mind and objectivity, and having regard to the public interest.

Certain decisions, such as those pertaining to planning committees for example, require that you form your decision based only on the facts in front of you. You should not approach these decisions having already made your mind up. You are permitted to form a preliminary view on matters (called “pre-disposition”), indeed this can sometimes be unavoidable, however you must not hold a view to such an extent that you are totally unprepared to have that opinion changed, regardless of the evidence and advice provided at the meeting (called “pre-determination”).

If you allow pre-formed opinions, or other prejudicial factors to influence your decision making so as to lead to a bias, you will likely be in breach of this section of the Code.

3.7: Compliance with the Law and the Authority’s Rules and Policies

3.7:(a) uphold the criminal law and notify the Monitoring Officer or convictions or out of court disposals; (b) observe the law and rules on claiming of expenses and allowances; (c) comply with the NHDC Members Protocol for Gifts and Hospitality; (d) comply with other NHDC policies setting out conduct from Councillors; (e) attend compulsory training provided by the authority or when directed to following the determination of a Councillor Conduct complaint.

(a) **Uphold the Criminal Law:** Where a Councillor has pleaded guilty to, been convicted of, or accepted an out of court disposal relating to a criminal offence, then s/he has failed to uphold the criminal law. In any of the above situations, a Councillor must report this to the Monitoring Officer no more than 14 days after the date of the conviction or out of court disposal being administered.

(b) ***Expenses:*** If a Councillor is in any doubt about any entitlements or the proper way to claim, the Councillor should ask Committee/Democratic Services for advice. A Councillor needs to keep proper records of expenditure supported by receipts where appropriate, so that a claim can be properly evidenced. Even if a particular scheme does not require receipts, a Councillor is strongly advised to keep these so that they can prove how much has actually been spent on the items being claimed.

(c) ***NHDC Members' Protocol for Gifts & Hospitality:*** It is important that the Councillor follows the Protocol, declaring any gift or hospitality of at least £50 (and above) to the Monitoring Officer, using the new individual Councillor Register of Interests form and where appropriate declare this in a meeting as a Declarable interest. The law underpinning this is the Bribery Act 2010 and the importance of not being seen to be placed under an improper obligation (or not to appear to have been put under such an obligation). Accepting any gifts or hospitality, irrespective of value, could be regarded as compromising a Councillor's objectivity when a Councillor makes decisions or carries out the work of the Council. This is also true of any services or gifts in kind.

This does not prevent a Councillor from attending official events such as a civic reception or general consents set out in the Protocol. This can be found on the internet on the following page:

<http://www.north-herts.gov.uk/home/council-and-democracy/councillors-mps-and-meps/councillors-declaration-interests>

(d) ***Complying with other NHDC Policies:*** Councillors should be/or make themselves familiar with NHDC Policies and ensure that these are followed. This is because there are, in the main, processes that the Council should follow in given circumstances and failure to do so can leave a Council open to legal challenge/or complaints to the Local Government Ombudsman for not doing so ('maladministration'). Failure to comply with NHDC Policies is likely to amount to a breach of this paragraph of the Code unless there are clear and cogent reasons why a Councillor did not do so.

(e) **Attend compulsory training:** Councillors should ensure that they attend all compulsory training provided by the Council, whether they have been specifically directed to attend or not. Training is to be considered compulsory when it has been designated as such by a Statutory Officer; with the agreement of the Group Leaders; or by decision of Full Council, Cabinet or Committee.

The Monitoring Officer will take a reasonable and pragmatic approach to this paragraph of the Code – in terms of ability to attend or undertake training. If this relates to attendance of training in person and a Councillor is unable to attend for personal or work related reasons, then allowances may be made, on the understanding that the Councillor shall use his/ her best endeavours to attend the next session/ date arranged or proposed.

Where this relates to e-learning, then assistance may be provided to complete any training at the Council's offices (if a Councillor believes they are unable to do so via a personal computer or tablet).

Failure to attend or undertake the training is likely to amount to a breach of this paragraph of the Code.

PART 2 COUNCILLORS' INTERESTS

4: Disclosable Pecuniary Interests (DPI's) and Declarable Interests

Paragraphs 4.1 - 4.5 deals with a class of interest which is statutory under Section 30 of the Localism Act 2011 - Disclosable Pecuniary Interests (DPIs) and 4.6 – 4.7 – sets out an additional NHDC class of interest that has been included and approved by Councillors – 'Declarable Interests'.

4.1 – 4.5: Disclosable Pecuniary Interests ('DPIs')

What are they?:

There is a legal requirement under the Localism Act for a Code that includes reference to DPIs and for Councillors to take certain actions when they have a DPI.

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 No1464 (the '2012 Regulations') sets out what these DPI's are; these statutory requirements are replicated in the Code. The DPIs are set out in the Code under Appendix A with some further (albeit brief) explanation in the DCLG's Guidance.

In summary terms, a Councillor must notify the Monitoring Officer of their DPI (where one exists) within 28 days of taking office, or of any changes to their DPIs. Any interests will be included in a publicly available register on NHDC's website (except if 'sensitive information' – see below) and if a Councillor has one which is the subject of the Council business it will affect their ability to participate in that business/attend meetings to discuss this and make decisions.

It is a Councillor's responsibility to comply with the requirements of the Code/the Act, as a breach of the requirements can be a criminal offence and, if convicted, could lead to an unlimited fine and disqualification from office for up to 5 years.

A Councillor has a DPI if it is his or her own interest, or the interest of a "relevant person", defined as their spouse or civil partners (or a person with whom the Councillor is living with as a spouse or civil partner) under the 2012 Regulations. This provision is especially relevant under the 'contracts' and 'land' provisions of the regulations, (see below.)

Note that this can potentially extend to a spouse or civil partner that a Councillor is no longer living with, until divorce or dissolution of a civil partnership. Therefore, Councillors may be in a position where they have to register and disclose the DPIs of a spouse or civil partner as well as someone they are then living with as a spouse or civil partner. Councillors are not, however, obliged under the legislation to ask what assets their spouse or civil partner (or a person with whom they are living with in that regard) have and do not have to identify the relevant person when registering their DPIs or disclosing the interest in a meeting.

In terms of DPIs and their effects on a Councillor's participation in a meeting, section 31 of the Act indicates that if a Councillor has a DPI "*in any matter to be considered or being considered*" then they cannot participate. The requirement is set out under paragraphs 6.1. This is subject to any dispensation that is granted by the Monitoring Officer as per paragraph 7 of the Code. The DCLG Guidance does not elaborate on such matters in detail.

There have been some recent cases in the civil and criminal courts, however, these have again come to different conclusions.

In the first criminal conviction case under the Localism Act, ***R v Flowers [2015]*** a former Leader of Dorset County Council was convicted of having a DPI in a matter that was considered at a Strategic meeting and without reasonable excuse, had participated and voted. At that time, he was a non-executive director of a housing charity and although he was not in receipt of a salary, he had received various remuneration payments for the years 2010 to 2013. At the hearing of the case, the Judge noted that the defendant Councillor was of good character and that, in the Councillor's view, the matters that were considered at the meeting were broad in nature and did not concern detailed issues of planning and ownerships. However, the Judge concluded that before the meeting the defendant Councillor should have taken time to consider his position, sought advice from the Monitoring Officer or a dispensation. In the absence of that the defendant Councillor should not have take part in that meeting. A conditional discharge and costs were imposed.

In an almost mirrored civil planning case, ***Kelton v Wiltshire Council***¹⁸, the decision to grant permission was challenged (amongst other things) because one of the Councillors on the planning committee was a director of a not-for-profit affordable housing company who supported and had an interest in the affordable part of the potential development. The claim that the councillor's directorship amounted to a DPI was not upheld as there was no direct pecuniary or proprietary interest in the planning application. On the facts of that case, however, there was a real possibility of bias and the Councillor should not have participated in the meeting or the decision making.

What can be gleaned from the civil case of *Kelton*, as well as an earlier decision in *Freud*¹⁹ is that the DPI must be the subject of the Council business (so the DPI that is the subject of Council business e.g. the Councillor's employment, land, contract with the Council) and if so, the interest must be declared and the Councillor be prevented from participating in the meeting and must leave under the legislation, the Code and NHDC's Standing Orders. Unhelpfully, this is the opposite of what was decided in the criminal case of *Flowers*. The best advice that can be provided at this stage is therefore to seek advice and potentially a dispensation (see section 8 below), and err on the side of caution. A good test to apply is for a councillor to ask her/himself is what a constituent, in possession if the facts, would think about an interest held by a councillor.

¹⁸ *Kelton v Wiltshire Council* [2015] EWHC 2853

¹⁹ *R. (on the application of Freud) v Oxford City Council* [2013] EWHC 4613 (Admin)

The DPI's have been replicated below with the DCLG Guidance, with further NHDC explanation in bold italics.

Disclosable Pecuniary Interest description	What does this mean?
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
	<i>Note that this goes beyond work within a Councillor's authority area. However, it will only be an issue at the Council meeting if this item is about the relevant person's employment and/or business. It is not anticipated that a Councillor would have a DPI that extended to any general profession or trade or vocation discussions.</i>
Sponsorship (Other payments received)	Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the Monitoring Officer about your Disclosable Pecuniary Interests following your election or re-election, or when you became aware you had a Disclosable Pecuniary Interest relating to a matter on which you were acting alone.
	<i>Note this includes monies paid by the Councillor's party in support of the Councillor's election. Councillors do not have to include the allowances or expenses that they receive from NHDC. In this case, the DPI will be the identity of the person or organisation that has given the Councillor the payment.</i>
Contracts	Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority – - under which goods or services are to be provided or works are to be executed; and - which has not been fully discharged.
	<i>Note, this means any ongoing goods and services contracts that a relevant person (or their firm – if they are a business partner or have other beneficial interests in the business) has with NHDC.</i>
Land	Any beneficial interest in land, which is within the area of the relevant authority.
	<i>Note this includes residential or commercial property (usually also where a Councillor/ spouse or partner lives, as a Councillor will have some sort of tenancy, or ownership or right to occupy). It does not include easements – i.e. access to land, or rights that would not ultimately allow the relevant person the right to occupy or receive income. When identifying the land, the full address for residential or</i>



	<i>commercial premises should be provided and for other land, a road or map identification or TR/OS Grid reference²⁰ should be provided.</i>
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
	<i>Note that this can cover a situation where a Councillor is “renting” a room in a house under licensing arrangements or in shared accommodation. This could also include an allotment a Councillor has from their authority.</i>
Corporate tenancies	Any tenancy where (to a Member’s knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
	<i>Note, this means any tenancies with the Council that a relevant person has (or their firm, if they are a business partner or have a beneficial interest in the business).</i>
Securities	Any beneficial interest in securities of a body where— (a) that body (to Member’s knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
	<i>Note that a Councillor will have an interest in the body if a relevant person is a business partner or a director of that body or has a beneficial interest in the securities. Securities, as per the 2012 Regulations cover shares, debentures, debenture stock, loan stock, bonds, units of a collective investment schemes within the meaning of the Financial Services and Markets Act 2000 and other securities of any description in the Councillor’s authority area. It does not include money deposited with a building society.</i>

NOTE: Even if an interest is not a DPI that does not mean a Councillor can participate. An interest may be a Declarable interest, which is also subject to restrictions on Councillor’s participation in discussions. Failure to declare a Declarable Interest may create a risk of predetermination or bias. (See section 4.6 below)

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

- Make written representations as a private citizen to the Council. It is recommended that the existence and nature of the interest should be disclosed in such representations;
- Appoint an agent to undertake discussions with Officers (this can include a family member unconnected with the Council);
- Possibly request that another Councillor represents views on the subject;

²⁰ As per Adjudication Panel for England Decision APE 0167 Donington Parish Council case 11 June 2004.

- Apply for a dispensation – but this will only be considered on the statutory grounds set out under section 33 of the Act (see paragraph 7 of the Code and explanation below).

4.6 – 4.7: Declarable Interests

The full wording is set out in the Code under paragraph 4.6. A Councillor will have a Declarable Interest in an item of business of the authority (that is not classified as a DPI) where it relates to, or might reasonably be likely to affect:

- (a) the **well-being or financial standing** of a Councillor/family member/employer or a person or body with whom the Councillor has a **close association to**, greater than it would the majority of
 - i. inhabitants of the **ward** affected by the decision; or
 - ii. inhabitants of the authority's **administrative area** where the decision affects the wider area.
- (b) the interests listed in the Appendix A to the Code, but in respect of for a Councillor's family/employer/or a person or body the Councillor has a close association with; or
- (c) is one which is so **significant that it is likely to prejudice a Councillor's judgement** of the public interest; or
- (d) relates to the interests of someone or body who provided the Councillor with a gift or hospitality of at least £50 within the last 6 years of the date of the decision; or
- (e) relates to or affects any body the Councillor is a member of or in a position of general control or management which:
 - i. the Councillor was appointed/nominated to by NHDC; or
 - ii. exercises **functions of a public nature**; or
 - iii. is directed for charitable purposes; or
 - iv. its principal purposes includes influence of public opinion or policy (including any political party or trade union).

Further clarification on the wording in bold is provided below.

A "person or body with whom you have a close association" – paragraph 4.6(a)

Close personal associates include people such as close friends, colleagues with whom a Councillor has particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people a Councillor simply comes in contact with through their role as Councillor or work in the local community.

Close personal associates can also include someone with whom a Councillor has a dispute, or whom a Councillor may reasonably be regarded as having an interest in disadvantaging. For example, being a member of the same golf or social club as another person would not of itself constitute a close personal association but having that person as a weekly golf partner, or giving someone a lift regularly to club meetings might well do. If in doubt ask the Monitoring Officer.

"Ward and administrative area" issues – Paragraph 4.6(a)

This will be relevant on a case-by-case basis if the decision affects a particular ward or the Council's administrative area. This could be an issue relating to a planning or licensing matter



and will be a Declarable Interest in a situation, for example, in that ward where the planning case has arisen, the decision is likely to affect a Councillor/family member/employer or someone the Councillor has a close association with more than the majority of inhabitants of that ward or administrative area.

What does “well-being or financial standing” mean - paragraph 4.6(a)

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect quality of life, either positively or negatively is likely to affect a person’s well-being. So if a Councillor or a family member/ employer/ close associate has the potential to gain or lose from a matter under consideration by the Council, then this will be a relevant factor.

The list of potential areas is long and would be difficult to set out in any meaningful way here. However, examples of decisions of this kind include obvious issues like: the location of planning developments affecting where a Councillor or a close personal associate of the Councillor lives; or the location of playgrounds where a Councillor has opposed them near their house or a close associate’s house because of issues about noise. It could be contractual negotiations or disputes that a Councillor’s close associate (body or person) has with the authority.

If this applies to Council business then a Councillor will have a Declarable Interest in that item at the very least and should act appropriately under the Code. It is always safer to declare an interest and if in doubt consult and follow the advice of the Monitoring Officer.

A “gift or hospitality of at least £50 within the last 6 years of the date of the decision” – paragraph 4.6(c):

If a Councillor had received such a gift or hospitality *in relation to their role as a Councillor*, then a Councillor would automatically have a Declarable Interest concerning the source of the gift/ hospitality.

Where relevant, and a Councillor received this gift or hospitality prior to initial election – then this will not apply – as it would not have been provided in connection with the Councillor’s role. This does not apply to gifts or hospitality that are unrelated to the role as a Councillor, such as Christmas gifts from friends or family, or gifts the Councillor has not accepted. It does not apply to civic receptions or working meals that are authorised by the Council. Consider the ‘**NHDC Member Protocol for Gifts and Hospitality**’ and make declarations accordingly. This provides further clarification on what is and is not considered to be connected with the Councillor’s role. The Protocol and relevant declaration form are available from the Monitoring Officer or on the following page:

<http://www.north-herts.gov.uk/home/council-and-democracy/councillors-mps-and-meps/councillors-declaration-interests>

Once the 6 years has passed, then the obligation to disclose that interest in any relevant meeting ceases.

Note 1: this is not the same as sponsorship – which will be a DPI see above description and explanation.

What is a body “exercising functions of a public nature” – paragraph 4.6(d)(ii)

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for different purposes. It is not possible to produce a definitive list of such bodies; however, here are some points to consider when deciding whether or not a body meets that definition:



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

If the answer is 'yes' to one of the above then it will be a body exercising functions of a public nature. Examples of bodies include government agencies, other councils, public health bodies, council owned companies exercising public functions, arms length management organisations carrying out housing functions, private company collecting refuse on behalf of NHDC and school governing bodies.

If a Councillor has a Declarable Interest then the nature and extent must be orally declared by the Councillor, as soon as it becomes apparent at any meeting (under paragraph 6.2 of the Code). Whether a Councillor can remain and participate in the meeting will depend on whether this interest would be regarded as so significant that it is likely to prejudice a Councillor's judgement of the public interest (see below explanation of public interest and actions required under paragraphs 6.2 of the Code). It is best to seek advice if unsure and heed that advice.

If a Councillor is "multi-hatted" or "twin-hatted", for example, of both the District and County Council, a Councillor is not necessarily prevented from participating and voting on the same item on both. *However*, see the more detailed **Member's Planning Code of Good Practice** in Appendix 3 to Section 8 in the Constitution and seek advice from either Councils Monitoring Officers if it is still unclear.

5: Sensitive Interests

The Code includes the statutory exemption from publishing a DPI – if it is sensitive in nature.

A DPI or Declarable Interest may be sensitive *if* the disclosure of the details of the interest could lead to the Councillor or person connected with the Councillor being subject to **violence** or **intimidation**. If the Councillor believes this would be the case, then they need to discuss this with the Monitoring Officer. A Councillor should explain their concerns regarding the disclosure of the sensitive information, including why it is likely to create a serious risk of violence or intimidation. This will be a case by case consideration; however the sort of information that has been withheld in the past relates to land, home address where a Councillor has been in the armed forces, or is involved in animal research and wishes to withhold their home address or employment details.

If the Monitoring Officer agrees, then the details that need to be entered on the Register of Interests are that the interest is a sensitive interest and disclosed at meetings – but limited to stating that the Councillor has an interest in a particular item that is withheld under section 32(2) of the Act. Where this is a DPI, the Councillor should then act according to the normal rules for declaring that s/he has an interest and is leaving the meeting. The nature of the interest will not, however, have to be disclosed in that public meeting if it has been agreed with the Monitoring Officer that it is sensitive.

Finally as indicated under paragraph 5.2 of the Code, if the information is no longer sensitive, then this must be notified to the Monitoring Officer **within 28 days**, so that it can be changed on the Register of Interests.



6: Declaring Interests, Participating and Voting at meetings

Underlying reasons for paragraph 6 of the Code are the seven principles of public life (see Appendix B) and the need for openness, honesty and indeed other local government requirements of transparency. The public cannot be expected to know or check whether a Councillor has an interest, and it is therefore important that this is made clear in a meeting.

Note that under Paragraph 2.1 of the Code, “meetings” is quite wide and covers all meetings of the council **including informal ones** with other Councillors or officers where these meetings relate to the Council’s functions or business.

DPIs

Under Paragraph 6.1, if any item of business of the authority relates to a subject in which a Councillor has a DPI, then the Councillor must orally declare the existence and nature of the DPI before the item is considered, or as soon as it becomes apparent.

The Councillor should not take part in any discussions of the matter or vote on it, and must always leave the room in which the meeting is taking place, unless they have been granted a dispensation from the Monitoring Officer (*see paragraph 7* and below for the grounds on which such an application can be considered).

If the meeting relates to a matter that will be taken as an individual executive decision, then the Councillor should make sure the DPI is declared before any decision is taken and alternative arrangements have been made for, for example, the decision to be taken by the Leader or the full Cabinet (as appropriate).

This is subject to a Councillor having applied for *and having been granted a dispensation*. A relevant authority can grant a dispensation on the statutory grounds set out under section 33 of the Act and the decision in the first instance rests with the Monitoring Officer

DECLARABLE INTERESTS

Paragraph 6.2 states that where a Councillor attends a meeting and is aware that s/he has a Declarable Interest in any matter being considered at that meeting then they must orally declare the existence and nature of the Declarable Interest.

Where the Declarable Interest is of a nature that, a member of the public in possession of the relevant facts would reasonably regard as being so **significant that it is likely to prejudice the Councillor’s judgement** of the public interest, they that Councillor must not take any part in the discussions, or vote on the item. The Councillor should also leave the room, unless

- i. they have a dispensation from the Monitoring Officer; or
- ii. they wish to exercise a ‘Councillor Speaking Right’

What is “so significant that it is likely to prejudice a Councillor’s judgement” – paragraph 6.2(b)

In simple definitional terms the interest should be so significant (important or noticeable) that it is likely to prejudice (*acting with preconceptions, partiality and prejudgement which results in detriment, harm or disadvantage*) the Councillor’s actions or judgement.



According to PSOW prejudice **is an objective test**:

“You must decide not whether you would take the decision without prejudice, but whether you would be seen to be doing so.”

If a reasonable member of the public with knowledge of all the relevant facts would think that the Councillor’s judgement of the public interest might be prejudiced, then a Councillor will have this type of Declarable Interest that not only needs to be declared but this will mean that a Councillor will have to move to the public area and speak *as a member of the public would if public speaking is allowed*, can listen to any other public speeches, but must then leave the room.

The public interest is a general term and test applied in a variety of situations and can cover a range of values. It is to be distinguished from matters that may be of interest to the public, typically for reasons of curiosity. There is public interest in transparency and accountability to promote public understanding and safeguard the democratic process. There is public interest in good decision-making and ensuring that decisions are fair, with best use of public resources. It will be in the public interest for elected (and non-elected) public officials to make their decisions independently, having weighed the facts, evidence and arguments in a manner that is consistent with the principles of public life such as selflessness, objectivity and integrity.

So a Councillor must ask him/herself *not whether the interest is so significant that it would impair the judgement of the public interest*, but whether **a member of the public**, if s/he knew all the relevant facts, would think that the Declarable Interest was so significant that it would be **likely** to do so.

For example, a Councillor would have a Declarable Interest that is likely to prejudice his/her judgement of a planning application proposal, if a good friend lives next to the proposed site. This is because the friend is likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward affected by the decision. A reasonable member of the public might think that it would impair the Councillor’s ability to judge the public interest when considering the planning application.

Another example may be where there has been a dispute between the Councillor and an individual/ group or body who could be disadvantaged by a decision. An informed reasonable member of the public might conclude that the Councillor’s ability to judge what is in the overall interests of the residents of the District would be impaired.

If a Councillor wishes to speak as a member of the public, then they should register, in advance, to do so with Committee Services. For most Council, Cabinet and Sub-Committee meetings this will be early on in the meeting process under the public participation item. For Planning, it will be as the item is dealt with.

7: Dispensations

The Act allows Councillors to apply for a ‘dispensation’ if a Councillor has a DPI and this has been mentioned at various points of the Guide above. Simply put there are five statutory circumstances for an application and the Monitoring Officer will consider these on a case by case basis following an application by a Councillor. The authority has also decided that dispensations may be applied to Declarable Interests.

The relevant circumstances under section 33(2) of the Act are that the authority:



- “(a) considers that without the dispensation the number of persons prohibited by section 31(4) 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,*
- (b) considers 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,*
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area,*
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 33(4) from participating in any particular business to be transacted by the authority's executive, or*
- (e) considers that it is otherwise appropriate to grant a dispensation.”*

If the Monitoring Officer grants a dispensation, it may cover a particular meeting or item but must not exceed a period of four years under section 33(4) of the Act. If the dispensation is granted it will be in writing; however, that does not mean that a Councillor no longer needs to declare the DPI or Declarable Interest (either on the Register of Interests or at meetings) – as the Monitoring Officer is only allowed²¹ to lift the restrictions on participating, discussing or voting on the matter. Any declaration of the interest should be followed by the explanation that a dispensation is in place.

Whilst Councillors are encouraged to dip in and out of this Guide for assistance, if they are unsure then further guidance should be sought from the Monitoring Officer or Deputy Monitoring Officer.

27th April 2018 (with effect from 4th May 2018)

Appendix A – NHDC Code of Conduct

Appendix B – Nolan Principles of Public Life

Appendix C – Dispensation grounds

²¹ Under section 33(1) of the Act.