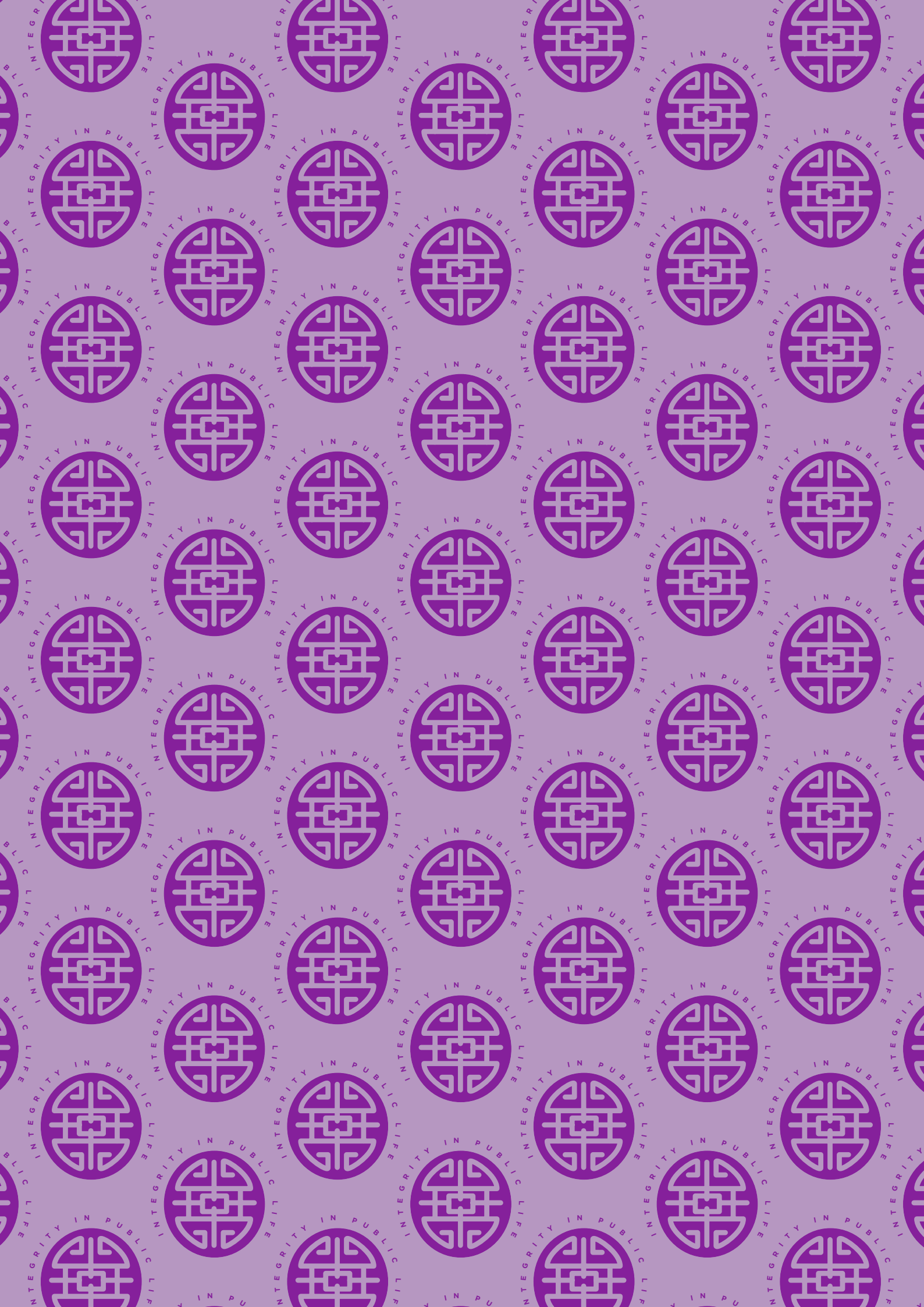
STANDARDS COMMISSION FOR SCOTLAND

INTEGRITY IN PUBLIC LIFE

GUIDANCE ON THE COUNCILLORS' CODE OF CONDUCT

September 2017


INTEGRITY IN PUBLIC LIFE

FOREWORD

The maintenance of high ethical standards in public life is crucial if public confidence in our democratic institutions is to be maintained. As Minister for Local Government and Housing, I welcome this opportunity to endorse the work of the Standards Commission for Scotland and the contents of this guidance note, which will help to ensure that both elected members and the general public have a clear understanding of those standards and of how to meet them.

Kevin Stewart MSP
Minister for Local Government and Housing

INTRODUCTION

The public rightly expects exemplary standards of behaviour from you as a councillor when undertaking your duties. It is your personal responsibility to comply with the requirements of the Councillors' Code of Conduct ("the Code") and your actions should be part and parcel of winning the public's respect and trust in the work you do. In other words, simply ticking boxes is not enough; you have to understand the reasons behind good ethical behaviour and apply these thoughtfully on a case by case basis.

In complying with the Code, you are demonstrating that you understand its requirements and intend to meet the high standards of behaviour the public expects from its elected representatives. Poor conduct that breaches the Code undermines the critical relationship of trust between the public and the people they elect. This relationship is essential if public trust in local government and the democratic process itself is to be maintained.

As a councillor, you must read and abide by the Code and endeavour to demonstrate the Key Principles outlined in Section 2. In complying with the provisions of the Code, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a councillor. This is not the same as members of the public not liking a decision you made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly.

There is a statutory framework governing behaviour in public life, comprising:

- A Code of Conduct which you must comply with when carrying out your duties as a councillor;
- A set of arrangements for dealing with complaints that a councillor has acted inappropriately and has contravened the Code.

In addition, your council will have its own internal policies which apply the Code in the context of its work.

The Standards Commission aims to improve ethical standards in public life through guidance and promotion wherever possible, as well as through the enforcement powers given to us.

We took the opportunity in 2016 to review and revise the guidance issued to assist councillors in their interpretation of the revised Code, which came into effect in December 2010, in order to ensure it was as helpful and accessible as possible and that it remained fit for purpose. In doing so, we obtained feedback from stakeholders, including the views of the Commissioner for Ethical Standards in Public Life in Scotland, Monitoring Officers and the Society of Local Authority Lawyers & Administrators in Scotland. We were grateful to everyone who helped us in that process.

As with our previous version of the Guidance to the Councillors' Code we retained the guidance in the same document to enable readers to find the information they require easily and quickly. Where possible, reference in the guidance is made to the specific paragraph of the Code to which it relates. A standalone version of

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the Guidance is also available on the Standards Commission's website at www.standardscommission.org.uk.

We also included illustrations and examples of factors that you should consider when interpreting the Code. We continue to hope this will help you to relate the provisions of the Code to the scenarios you face and the situations you find yourself in. However, please note the lists of factors to consider are not exhaustive. In addition, the illustrations provided are simply examples and whether or not there has been a breach of the Code will depend on the specific circumstances of any case. You still have a personal responsibility to ensure your actions accord with the provisions of the Code.

The illustrations where no breach was found to have occurred concern cases that were determined by the Commissioner for Ethical Standards in Public Life in Scotland and were not referred to, or considered by, the Standards Commission. Further information on the illustrations where no breach was found can be obtained from the web summaries on the Commissioner for Ethical Standards in Public Life in Scotland's website at www.ethicalstandards.org.uk.

While the Standards Commission's guidance is clearly marked as such and must be distinguished from the Code itself, paragraph 1.5 of the Code provides that councillors must observe any guidance from the Standards Commission. The guidance is intended to help you understand what the Code means for you as a councillor. It is not, however, a substitute for the Code itself, which contains more detail.

As ever, we recognise that as circumstances change and the challenges councillors face evolve, additional guidance may be required. It is simply not possible for the guidance to cover every conceivable circumstance. We have therefore reviewed and updated the guidance and illustrations in light of feedback and recent Hearings. We intend to continue to review the guidance on a regular basis and we welcome any feedback, comments or suggestions as to how it can be further improved.

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SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT

1.1 The Scottish public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties in the Council. You must meet those expectations by ensuring that your conduct is above reproach.

1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000 provides for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies; imposes on Councils and relevant public bodies a duty to help their members to comply with the relevant code; and establishes a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the codes. The Act requires the issue of a Code of Conduct for councillors - this Code - which was originally prepared by COSLA at the invitation of Scottish Ministers and approved by the Scottish Parliament. The Code has since been reviewed and re-issued in 2010 by the Scottish Government, following consultation and the approval of the Scottish Parliament.

1.3 This Code applies to every member of a local authority in Scotland. As a councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

1.4 This Code reflects the legal framework of Scottish Councils at the date of the Code's publication. Councillors and employees should interpret it in the context of their individual Council's decision making structure.

Guidance on the Code of Conduct

1.5 Councillors hold public office under the law and must observe the rules of conduct stemming from the law, this Code and any guidance from the Standards Commission and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code of Conduct.

1.6 The sections of the Code which follow have been developed in line with the key principles listed in Section 2 and provide additional information on how the principles should be interpreted and applied in practice. No written information can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice from senior Council employees. You may also choose to consult your own legal advisors, and on detailed financial and commercial matters, to seek advice from other relevant professionals.

Enforcement

1.7 Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out the provisions for dealing with alleged breaches of the Code and for the sanctions that will be applied if the Standards Commission for Scotland finds that there has been a breach of the Code. In respect of councillors, those sanctions are set out in Annex A.

SECTION 1:
INTRODUCTION TO THE CODE OF CONDUCT

Standards Commission for Scotland's Guidance for Councillors and Local Authorities in Scotland

Using this Guidance:

- The Councillors' Code of Conduct is stated in purple text.
- The Standards Commission's Guidance to the Councillors' Code of Conduct is shown as white text contained within a purple background.
- Illustrations are shown as dark blue text within a light blue background.

1. The revised Councillors' Code of Conduct was approved by the Scottish Parliament and came into effect on 21 December 2010.

2. This Guidance Note comes into effect on 1 September 2017 and replaces the Guidance on the Councillors' Code of Conduct, which came into effect on 1 March 2016.

3. This guidance is for Councils and councillors. It is also directed to co-opted members of committees and sub-committees who are not elected councillors. All references to 'you' in the Guidance are directed specifically at councillors and co-opted members of committees and sub-committees.

4. Councils should make arrangements to deliver training and induction sessions on ethical standards and they should strongly encourage attendance by all their councillors and senior officers at each session. The Standards Commission is willing to support such programmes wherever practical.

5. You should attend training and induction sessions on ethical standards and should ensure you are familiar with, and understand, the provisions and principles of the Code and this Guidance Note. You should seek assistance before you act if you are unsure as to how the Code should be interpreted and applied.

6. You are encouraged to promote and support the Code at all times and to encourage others to follow your example in doing so. Experienced councillors should consider whether they can act as a mentor to others to help them to understand the Code.

7. The Code should be read as a whole. It may be necessary to cross reference different provisions.

SECTION 2:
KEY PRINCIPLES OF THE CODE OF CONDUCT

2.1 The general principles upon which this Code of Conduct is based should be used for guidance and interpretation only. These general principles are:

Duty
You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the 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 you have been elected to serve, and to represent their interests conscientiously.

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

Integrity
You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity
You 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
You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

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

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

Leadership
You 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 the Council and its councillors in conducting public business.

Respect
You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a Councillor.

2.2 You should apply the principles of this Code to your informal dealings with the Council's employees, party political groups and others no less scrupulously than at formal meetings of the Council and its committees and sub-committees.

SECTION 2:
KEY PRINCIPLES OF THE CODE OF CONDUCT

8. The key principles themselves are for guidance and you should ensure that you have regard to and follow these principles. However, a breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code.

9. The key principles are there to help you interpret and apply the Code. However, it is your responsibility to make sure you are complying with the provisions of the Code. In doing so, you may need to exercise your judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard your actions or decision making in your role as a councillor. This is not the same as members of the public not liking a decision you have made or an opinion you have expressed legitimately in the course of your work; it is about whether you have acted properly.

SECTION 3:
GENERAL CONDUCT

3.1 The rules of good conduct in this section must be observed in all situations where you act as a councillor, including representing the Council on official business.

10. It is very important to note that the rules of good conduct set out in Section 3 must be observed in all situations where councillors are acting as councillors, including representing the Council on official business. You should be mindful that your perception of when you are carrying out official business and when you are acting privately may be different to how it is viewed by a member of the public. You may wish to treat the Code as being applicable in all situations in which you might be perceived to be acting as a councillor. Factors to consider include:

- whether you are clear about the capacity in which are you acting;
- whether you describe yourself as a councillor or are otherwise readily identifiable as a councillor in the situation / circumstances;
- whether you are on council premises or at a council event;
- whether you are using social media where you are identifiable as a councillor;
- whether your conduct could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute;
- whether you are engaged in political activity, or comment on political matters and whether these fall within or outwith the scope of the council's functions;
- whether you are representing the council or speaking on behalf of the council.

A councillor had sought to take photographs and had directed an offensive verbal comment to a member of the public when investigating a potential breach of a Tree Preservation Order. While the Respondent was entitled to investigate the possibility of a breach, the manner in which he had done so was disrespectful in that he had sought to take photographs without indicating his intention to do so and had directed an offensive comment towards the member of the public. He was found to have breached the Code.

At a Council committee meeting, a councillor had addressed an inappropriate remark to the Committee Convener and, in particular, had used a sexual innuendo. This was disrespectful and he was found to have breached the Code.

11. You should always think ahead. If you have any concerns about a potential problem, speak to the Monitoring Officer or Chief Executive so that advice can be sought and/or action can be taken before a situation becomes a serious problem. This could avoid or reduce the likelihood of an inadvertent breach of the Code and/or a complaint being made about you.

12. The rules of good conduct may apply when you are engaging in media activity including using social media. Social media is a term used to describe on-line technologies, applications

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and practices that are used to share information, knowledge and opinions. These can include, but are not limited to, social networking sites, blogs, wikis, content sharing sites, photo sharing sites, video sharing sites and customer feedback sites. The conduct expected of you in a digital medium is no different to the conduct you should employ in other methods of communication, such as face to face meetings and letters. Factors to consider when using social media include:

- whether you are identifiable as a councillor by directly referring to yourself as such or indirectly by referring to the council or through information or images posted;
- whether you are using Council equipment and / or your Council's information technology network or your own;
- whether you have complied with the law including defamation, copyright, data protection, employment and equalities or harassment provisions;
- whether you have complied with any policy your Council has produced on the use of social media;
- whether information you are posting is confidential and you only have access to it because you are a councillor;
- whether you are demonstrating bias or pre-determination – do not express an opinion on an application you will be determining;
- whether you have considered the immediate and permanent nature of the contribution you are about to make.

13. As a councillor, your right to freedom of expression under Article 10 of the European Convention on Human Rights attracts enhanced protection when your comments are political in nature. However, you may also wish to think about:

- whether your comments are likely to bring your office or the local authority itself into disrepute;
- Whether you are treating others with respect and consideration;
- whether 'liking' re-posting and re-tweeting comments or posts, or publishing links to other sites could be reasonably perceived in the circumstances as endorsing the original opinion, comment or information, including information on other sites;
- whether to allow disagreement on your social media pages;
- tone can be harder to convey online so consider whether humour, irony and sarcasm can be perceived as such;
- whether you have to respond;
- the stricter rules that apply to election publicity;
- whether anything you post could be considered obscene.

Complaint alleged that a councillor engaged in public criticism of the Chief Executive of his Council by posting information and comments on the Oppositions Councillors' Facebook pages. The Councillor did not give the Chief Executive an opportunity to respond before publishing the comments on the Facebook page. The Hearing Panel was satisfied that the criticism by the Councillor was directed at the Chief Executive, that it showed a lack of both respect and courtesy to a Council employee and was made in public. The Panel concluded that the Councillor had criticised the conduct of the Chief Executive in public and had breached the Code.

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Conduct at Meetings

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

14. You must treat everyone you come into contact with in the course of your work as a councillor with courtesy and respect, even if you disagree with their views.

15. It should be noted that paragraph 3.1 provides that the rules of good conduct set out in Section 3 must be observed in all situations where councillors are acting as councillors, including representing the Council in official business. The list of meetings to which paragraph 3.1 applies should, therefore, be viewed as illustrative rather than exhaustive. The effect of the provision is that you must respect the Chair, colleagues, Council employees and any members of the public in all situations where you act as a councillor including – but not restricted to – meetings of the Council, its committees and sub-committees or of any public bodies where you have been appointed by, and represent the Council. Similarly, the word 'chair' in paragraph 3.2 is not restrictive to that specific term. The provision also applies to anyone holding a similar chairing or convening role.

16. The role of the Chair in any Council meeting, which includes a Committee meeting or a meeting of a working group or similar forum, is to ensure that the agenda of business is properly dealt with and clear decisions are reached. To do this, the Chair has a responsibility to ensure that the views and opinions of other participants (including the advice of officers) are allowed to be expressed and, at the same time, they have a responsibility for proper and timely conduct of the meeting and for helping to ensure the meeting is conducted in compliance with the Council's Standing Orders. This includes determining the point at which conclusions should be reached. It requires a balanced approach to ensure fairness to participants while at the same time dealing firmly with any attempt to disrupt or unnecessarily delay the meeting. If you are present, you share the responsibility for the proper and expeditious discharge of business. The role of the Chair in reaching such judgements should be supported and respected.

17. You are accountable for your own individual conduct at all times in terms of the Code when you are in the Chamber or Committee and at meetings where you are representing the council, irrespective of the conduct of others. Abusive or offensive language and/or unnecessarily disruptive behaviour should not be tolerated. It is a matter for the Chair to rule on the acceptability of language used during the course of a meeting and to take appropriate action as necessary, including requiring the withdrawal of a remark, requiring an apology, or any other action required to allow the meeting to properly proceed. Factors to consider include:

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- whether your behaviour, including your body language, is courteous and respectful even when you hold a different view;
- whether you are treating others with respect and consideration;
- whether your choice of language in meetings is appropriate and meets the high standards expected by the general public;
- whether it is appropriate to refer to other councillors by nicknames or by referring to them in the second person by using terms such as 'you';
- whether newspapers, mobile phones and other tablet devices are being used appropriately or whether their usage could be perceived as you not being engaged in the meeting or listening to what others are saying;
- whether your conduct could diminish the public's opinion of, and trust and confidence in, its elected representatives.

At a meeting of a Planning Committee, a councillor made inappropriate comments about a planning application in that she made a reference to 'lining developers' pockets'. While she had apologised unreservedly both publicly and privately, she was found to have breached the Code.

At a meeting of a Licensing Board, a councillor was disrespectful of members of the public who were present as objectors, when he questioned them in a confrontational and adversarial manner and was dismissive of their views. He was found to have breached the Code.

At a public meeting of the Council, a councillor gave the Provost a straight arm salute and said "Sieg Heil". He was found to have breached the Code.

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

3.4 Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

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18. It is understood that in the political environment of local government there may be tensions between individual councillors and between party groups. Factors such as minority Administrations, coalitions and multi-member wards may have a bearing on such tensions but it is essential to ensure that the interests of the electorate are represented as effectively as possible. Respect by councillors for one another and for the Council's employees plays a key role in this.

19. The requirement to respect all Council employees includes employees of contractors providing services to the Council.

20. You are entitled in your role as councillor to challenge fellow councillors and officers/employees. However, you should not do so in a personal or offensive manner. Issues relating to behaviour, conduct or performance of officers should be raised privately with the appropriate senior manager. Factors to consider include:

- whether you are asking an officer to do anything which compromises or is likely to compromise them and prevent them from undertaking their duties properly and appropriately. You must be aware of the lines of accountability within departments. You must not apply pressure to an officer to act against the instructions of management. You should not bring undue influence to bear on an officer to take any action which is contrary to law or against the Council's approved procedures;
- When you are representing a constituent, whether you are also recognising that you are still representing the council and as such you need to exercise extra care.

A councillor made comments in the press, which were publically critical of the capability of a newly appointed Council employee. It was found that the councillor had been disrespectful to the new employee and had breached the Code.

At a meeting of the Council, a councillor had accused a senior officer of collusion with the Council's Administration and had challenged the officer's integrity. He was found to have breached the Code.

A councillor sought to engage in, and exert influence over, direct operational management and had an expectation that actions should be taken in response to his engagement in respect of a complex childcare and housing case. Whilst his involvement may not have had any effect on the outcome of decisions, this had clearly been his intention. The councillor also sent correspondence to officers, which was disrespectful and discourteous. He was found to have breached the Code in respect of both matters.

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Remuneration, Allowances and Expenses

3.6 You must comply with the rules for the payment to councillors of remuneration, allowances and expenses.

Gifts and Hospitality

3.7 You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour or disadvantage to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

3.8 You must never ask for gifts or hospitality.

3.9 You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in your Council and in local government. As a general guide, it is usually appropriate to refuse offers except:-

(i) isolated gifts of a trivial character, the value of which must not exceed £50;

(ii) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or

(iii) civic gifts received on behalf of the Council.

3.10 You must not accept any offer of a gift or hospitality from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council. If you are making a visit to inspect equipment, vehicles, land or property, then as a general rule you should ensure that the Council pays for the cost of these visits.

3.11 You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.

3.12 You must not accept repeated hospitality or repeated gifts from the same source.

3.13 If it is the practice of the Council to seek sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

21. When considering whether an offer of hospitality is normal hospitality associated with duties as a councillor in terms of paragraph 3.9 (ii) and which would reasonably be regarded as appropriate, you should consider all the

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surrounding circumstances, including the value of the hospitality offered. It is also appropriate for you to consider the nature of your role within the Council e.g. the normal hospitality associated with a councillor's duties may be different to the normal hospitality associated with the duties of a Lord Provost, Provost, Council Leader or Convener.

22. Whilst the Code seeks to provide clear guidance about the type of gifts and hospitality councillors should normally avoid, the question of whether to accept a particular offer of a gift or hospitality is your personal responsibility. When considering whether or not it would be appropriate to accept an offer of a gift or hospitality, you should carefully consider factors such as:

- all the circumstances in which the gift or hospitality is being offered;
- the value or cost of the gift or hospitality;
- how a member of the public would view the nature of the gift or hospitality;
- whether the offer is from any individual or organisation who is an applicant awaiting a decision from the council or who is seeking to do business or to continue to do business with the council;
- whether the invitation is to attend something you would not normally attend;
- whether you would potentially be influenced to show favour to whoever has offered the gift or hospitality;
- whether acceptance of the gift or hospitality would place you under an obligation or which a member of the public, with knowledge of all the relevant facts, would reasonably regard as having placed you under an obligation;
- whether you should register gifts and hospitality you have declined in order to demonstrate transparency and provide perspective to what has been accepted;
- your Council's guidelines or policy on the acceptance of gifts and hospitality.

23. Further, you must not accept repeated gifts or hospitality from the same source. With the exception of gifts and hospitality as defined in paragraph 3.9 (ii) and (iii), you should consider very carefully whether it is appropriate to accept a second (and, if accepted, any subsequent) offer of gifts or hospitality from the same source. Factors to consider include:

- the value or cost of the gift or hospitality offered;
- the time period between the acceptance of the first offer and the second or subsequent offer.

24. If you do accept any gifts or hospitality, you must make an entry in the Register of Interests (with the exception of gifts and hospitality as defined in paragraph 3.9 (i) – (ii)) within one month of receipt.

25. In terms of the Bribery Act 2010 the following cases are offences:-

Case 1 is where -

(a) P offers, promises or gives a financial or other advantage to another person, and

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(b) intends the advantage -

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity

Case 2 is where

(a) P offers, promises or gives financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

An example of this might be where a windfarm operator promises to pay community benefit to an organisation in your ward, if you grant planning permission in circumstances where it would not otherwise be granted (i.e. not applying the proper statutory test of considering the provisions of the development plan and all material planning considerations or wrongly taking community benefit into account in determining a planning application).

In other words, while you are only required to declare gifts under this Code of Conduct, a gift to someone else which induces you to improperly undertake a statutory duty, such as granting a planning permission, is still likely to fall foul of the provisions of the Bribery Act 2010. This could result in a criminal prosecution against you.

Complaint alleged a councillor had failed to declare a gift or hospitality received from a recipient of planning permission who was to make further applications for the same development, during a site visit. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, in responding to a Council request. This was not regarded as inappropriate for the purposes of the Code and no breach was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Complaint alleged that councillors who had been appointed by the council as members of a racecourse committee had failed to declare benefits in the form of entrance badges. It was determined that while these entries had not been declared, the 'benefits' fell within the exception in paragraph 3.9(ii) as they could reasonably be regarded as appropriate to the councillors role given the Council's promotion and support of the venue as a key partner. No breach was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Confidentiality Requirements

3.14 Council proceedings and printed material are generally open to the public. This should be the basis on which you normally work, but there may be times when you will be required to treat discussions, documents or other information relating to the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

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3.15 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your individual use as a councillor and must not be disclosed or in anyway used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

26. You have a statutory right, subject to certain statutory exemptions, to council information under Access to Information rules and the Freedom of Information (Scotland) Act 2002. You also have a right under the common law to request information but only where you can show a need to know that information in order to perform your duties as a councillor. You may be provided with some documents and information, in your capacity as a councillor, for which it is legitimate for a Council to require this to be treated in a confidential way. Given the potential damage that the unauthorised disclosure of confidential material can do to the standing and integrity of a council, it is essential that you respect the provisions in paragraphs 3.14 and 3.15. You are also a data user and must not breach the data protection principles in handling information. Council information provided to you must only be used by you for the purpose for which it was provided. Information so held must therefore not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This also applies to instances where you hold the personal view that such information should be publicly available.

Councillors should be aware that a breach of confidentiality could result in them being personally liable under the Data Protection Act 1998. This may result in a potential criminal prosecution, civil liability for damages and the power of the Information Commissioner to impose fines as well as the more obvious reputational damage to both the councillor or Council which may follow.

27. You must not provide the media with off the record briefings on the general contents or 'line' of confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of the Council and its committees.

28. Sometimes the confidential nature of the material will be explicit, such as if the document is marked 'confidential'. In other cases, it will be clear from the nature of the information or from the circumstances in which it was

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provided to you that it is confidential. This may include the following types of information:

- commercial information such as information relating to a contract or a contractor's business;
- personal information such as information relating to an individual's employment;
- information which is confidential as a result of a statutory provision;
- information discussed in closed or private sections of meetings;
- legal advice obtained by the Council (either provided by officers or external legal advisers). This will be covered by legal privilege and should not be disclosed without the Council's permission;
- information which is received as a result of a relationship where there is an obligation of confidence, such as between a councillor and a constituent.

29. You should be aware of the provisions in relation to disclosure of information contained within Council papers exempt from publication under paragraph 1 schedule 7A of the Local Government (Scotland) Act 1973.

30. Sometimes it is a matter of timing in that information may eventually be released. However, you must respect the requirement for confidentiality even if you do not agree with it.

31. In the case of other documents and information, you should seek advice if you are in any doubt as to whether they are confidential. You should exercise your judgement on what should or should not be made available to outside bodies or individuals.

32. As a councillor, you are in a position of trust and members of the public may provide you with information that could reasonably be regarded as confidential. If the status of any discussion is unclear, you should establish at the earliest possible opportunity, whether some or all of the matters being discussed are to be treated as being confidential.

33. You should be aware of the provisions of the Data Protection Act 1998. If you hold personal information (such as details of constituent enquiries), you will require to be registered under the Data Protection Act. When holding such personal information you must abide by the following rules:-

- You must only use the information for the purposes for which it was given.
- You must not share this information with anyone without the consent of the person giving the information. If a constituent or other member of the public asks you to resolve an issue you are allowed to contact officers to attempt to resolve the issue on behalf of your constituent.
- You should not keep the information any longer than you need to.

Complaint alleged that a councillor referred to an investigation by the CESPLS involving another councillor at a meeting of a Licensing Board. This information was restricted under schedule 7A to the Local Government (Scotland) Act 1973 and it was found that there had been a breach of paragraph 3.15 of the Code of Conduct.

SECTION 3: **GENERAL CONDUCT**

Complaint alleged that a councillor circulated an email to a number of recipients which included information about an individual's commercial business, which the councillor had obtained through her position as a councillor. In doing so, she was found to have breached the Code of Conduct.

Use of Council Facilities

3.16 The Council will normally provide facilities to assist councillors in carrying out their duties as councillors or as holders of a particular office within the Council. This may involve access to secretarial assistance, stationery and equipment such as telephones, fax machines and computers. Such facilities must only be used in carrying out Council duties in accordance with your relevant Council's information technology, communications and member support policies or for incidental personal use as authorised by your Council and not related in any way to party political or campaigning activities. Where the Council recognises party political groups, assistance to such groups is appropriate in relation to Council matters but must not extend to political parties more generally and you should be aware of and ensure the Council complies with the statutory rules governing local authority publicity.

34. As a general rule, facilities paid for by the public purse, and provided for use in Council business, should only be used for Council business unless otherwise expressly permitted by the Council itself. It is recognised that some Councils may allow councillors occasional personal use of Council provided facilities such as laptops, mobile telephones, tablets etc.

35. Incidental personal use of Council facilities is permissible provided that this is authorised by the Council and permitted under the Council's policies. You should make yourself aware of your own Council's policy.

36. Facilities must never be used for party political or campaigning purposes. You are reminded of the relevant provisions of section 2 of the Local Government Act 1986, as amended by the Local Government Act 1988, which are as follows:

"2. Prohibition of Political Publicity

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

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

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

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

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

37. Councils and councillors should take into account and adhere to the terms of the Code of Recommended Practice on Local Authority Publicity issued in terms of section 4 of the 1986 Act.

38. The provisions under paragraph 3.16 apply at all times and not just when you are acting as a councillor. Other factors to consider include:

- whether you are either explicitly or impliedly consenting or allowing others to use council facilities improperly;
- how the resource you use is funded – e.g. transport or administrative support;
- whether the resource is being used for carrying out official Council business or for activity which has expressly been authorised by the Council or whether you are using it for something else as well;
- whether you are asking officers to act in any way which would conflict with or call into question their political impartiality, or which could give rise to criticisms that people paid from public funds are being used for party political purposes.

Complaint alleged a councillor, as Chairman of an Area Committee of the Council, had sent an email from his Council email address to the other members of that committee in which he invited them to look at a link which led to a series of posts about a company that was a prospective purchaser in current matters being considered by the Area Committee. In this case, it was determined that the use of the Council's email system was proper and legitimate, as it was being used for the conduct of Council business. In his capacity as Chairman of the Area Committee, it was entirely appropriate for the councillor to bring any relevant information to the attention of his fellow members. No breach was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Complaint alleged councillor had misused council facilities by issuing invitations to two meetings using the Council logo and giving her Council office telephone number. The first meeting was attended by officers and at least another two elected members in the ward had been invited. The second meeting was part of a consultation process on the development of the Council's school estate management plan. It was determined that the use of Council facilities was appropriate as they had related to acceptable constituency work. There was no evidence of party political or campaigning activities. No breach was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Complaint alleged that a councillor asked a Council officer to email a press release and a newspaper article which contained campaigning material to a newspaper and a local radio station. It was determined that the councillor had breached the Council's in-house protocol and the Code by using

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Council staff and facilities for the purpose of his re-election campaign. He was found to have breached the Code of Conduct.

Appointments to Partner Organisations

3.17 You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

3.18 If you become a director of a company as a nominee of the Council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you between the company and the Council. In such cases it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest.

39. Authorities will frequently appoint councillors onto outside bodies. If you are appointed to an outside body, you are still bound by the Code but you will also have responsibilities as a member of the outside body. These responsibilities will potentially include personal liabilities and may also raise questions of conflict of interest. Conflicts of interest may arise through competing personal interests, or the competing interests of the respective organisations of which you are a member. Councils will therefore need to consider this issue carefully when appointing councillors to outside bodies. You need to consider carefully whether you can accept such appointments in each case. Further guidance for councillors appointed to arm's length external organisations can be found on the Standards Commission's website at www.standardscommissionscotland.org.uk/education-and-resources.

40. You are reminded of the specific exclusions detailed within paragraph 5.18. As a member or director of an outside body you need to consider whether the outside body falls within one of these. You are reminded to be aware of how membership of other bodies impacts on your need to declare interests. However, membership of statutory joint boards or joint committees composed exclusively of councillors does not raise any issue of declaration of interests.

41. You should ensure you are clear about the different roles and responsibilities on the different bodies – including Companies Act and the Office of the Scottish Charity Regulator (OSCR) requirements and being bound by provisions in Codes that may cover the other bodies as well.

42. If you have any doubts about your responsibilities or the impact of an appointment on other areas of the Code, you should seek early advice in advance of accepting appointment or meetings. Advice can be sought from Council officers or, if appropriate, from officers of the outside body.

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A complaint alleged a councillor had breached the Code when dealing with matters which related to the councillor's position as a Council's appointed representative on a partner organisation. The councillor sought advice on her responsibilities and dealt with a matter, where she had been contacted by employees of a trust, in accordance with the rules of conduct of the partner organisation. The conclusion of the Commissioner for Ethical Standards in Public Life in Scotland was that no breach of the Councillors' Code of Conduct was established.

Dealings with the Council

3.19 You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, ratepayer, tenant, recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action which could lead members of the public to believe that preferential treatment is being sought.

43. As a councillor, you must not only avoid conduct which seeks to further your own particular interests, or the personal interests of others, but you must also avoid conduct that may give the impression you are seeking preferential treatment. The test is not only whether it is your intention to seek preferential treatment but also whether a member of the public, with knowledge of all the relevant facts, would reasonably consider that preferential treatment was being sought.

Complaint alleged a councillor used his position to seek information from senior officers about a planning application his neighbour had submitted, which would not normally be available to members of the public, and to exert influence in asking that the matter be dealt with urgently. In doing so, he was found to have failed to distinguish between his role as a potential objector and that of a councillor. It was found that the councillor's conduct amounted to attempts to seek preferential treatment from the Council and he was found to have breached the Code.

Responsibilities to the Council as a Member of the Public

3.20 The law makes specific provision that if a councillor is in two months' arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues, in order to preserve public confidence that councillors are taking decisions in the general public interest. Similar considerations should apply in other forms of dealings between you and the Council where indebtedness may arise. Whilst you are a member of the community, you are also a representative of that community and of the Council to which you are elected. As there is potential for public perception of abuse of position and poor leadership, you must seek to avoid being in debt to the Council.

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3.21 If you owe a debt to the Council, for example, in relation to rent due for a council house or commercial premises where the Council is the landlord, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision which may create suspicion of a conflict of interest. For example, where you are in arrears of rent for a council house, you must not participate in decisions affecting the levels of rent to be paid by council house tenants.

SECTION 4:
REGISTRATION OF INTERESTS

4.1 The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are "Registrable Interests", and you must ensure that they are registered, when you are elected and whenever your circumstances change. The register should cover the period commencing from 12 months prior to and including your current term of office.

4.2 Regulations made by Scottish Ministers describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, or cohabitee.

Category One: Remuneration

4.3 You have a registrable interest where you receive remuneration by virtue of being:-

- **(i) employed;**
- **(ii) self-employed;**
- **(iii) the holder of an office;**
- **(iv) a director of an undertaking;**
- **(v) a partner in a firm; or**
- **(vi) undertaking a trade, profession or vocation, or any other work.**

4.4 You do not have a registrable interest simply because you are a councillor or a member of a joint board, a joint committee or of COSLA.

4.5 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 "Related Undertakings".

4.6 If you receive any allowances in relation to membership of any organisation the fact that you receive such an allowance must be registered.

4.7 When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

4.8 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

4.9 Where you otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication and the frequency of articles for which you are paid.

4.10 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and detail the nature of its business.

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4.11 Registration of a pension is not required as this falls outside the scope of the category.

Category Two: Related Undertakings

4.12 You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

4.13 You must register the name 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 you are a director and from which you receive remuneration.

4.14 The situations to which the above paragraphs apply are as follows:-

(i) you are a director of a board of an undertaking and receive remuneration - declared under Category one; and

(ii) you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

4.15 You have a registrable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 4.20) have made a contract with the Council of which you are a member:

(i) under which goods or services are to be provided, or works are to be executed; and

(ii) which has not been fully discharged.

4.16 You must register a description of the contract, including its duration, but excluding the consideration.

Category Four: Election Expenses

4.17 You must register a statement of any assistance towards elections expenses received where the value of any single donation exceeds £50.

Category Five: Houses, Land and Buildings

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

4.19 You are required to give the address of the property, or otherwise give a description sufficient to identify it.

Category Six: Interest in Shares and Securities

4.20 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body and the nominal value of the shares is:-

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(i) greater than 1% of the issued share capital of the company or other body; or

(ii) greater than £25,000.

Category Seven: Gifts and Hospitality

4.21 You must register the details of any gifts or hospitality received, however it is not necessary to record any gifts or hospitality as described in paragraph 3.9 (i) to (iii) of this Code. This record will be available for public inspection.

Category Eight: Non-Financial Interests

4.22 Councillors may also have significant non-financial interests and 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, non-financial interests are those which members of the public might reasonably think could influence your actions, speeches or votes in the Council which could include appointments to Committees or memberships of other organisations.

44. The requirements of this part of the Code are intended to give members of the public confidence that decisions are being taken in the best interests of the public and not those of councillors or their family, friends or personal associates.

45. The Register should cover the period 12 months prior to you being elected and continues throughout your term of office. For example, if you were newly elected or re-elected to office in May 2017, your Register should cover the period commencing May 2016 and include the subsequent term of office. Should an interest no longer apply (for example if you cease to receive remuneration through employed work during your term of office), the entry should still be listed in the Register and retained for the whole term of office.

46. You should be aware that the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 indicates that officers of the Council must retain the record for a period of five years after the date a councillor ceases to be in office.

47. In terms of the 2003 Regulations you are required to update your entries in the Register of Interests within one month of your circumstances changing. This includes registering the receipt of gifts and hospitality. While the Guidance for Councillors and Local Authorities in Scotland states that Councils should issue a reminder to you every six months, it is nevertheless your personal responsibility to ensure your entry is updated within one month of a new interest arising or your circumstances changing.

48. Under Category One: Remuneration, the level of remuneration does not matter in terms of registration, the

SECTION 4: **REGISTRATION OF INTERESTS**

question is only whether you have received remuneration. This means paid work, no matter how casual or trivial in nature, requires to be registered.

49. For categories where the Code does not specifically mention the level of detail to be registered, it is for you to decide. In making such a decision, you should observe the key principles and, in particular, those of selflessness, integrity, openness and honesty. In terms of paragraph 4.19, you are required to provide the full address of the houses, land and buildings or sufficient information to allow them to be identified. This is for the purpose of the official register. What is published on the Council's website does not necessarily require to be as detailed (for example it might just say you own a residential property in Glasgow).

50. In relation to paragraph 4.19 of the Code, there is no requirement to register residences outwith Scotland. In exceptional circumstances where such an interest may affect a matter before the Council, it will be for you to declare that interest in terms of the requirements of the Code. However, you must register houses, land and buildings in Scotland even if they are outwith your Council area.

51. When considering whether you have a registerable non-financial interest, you should bear in mind that the test is whether the interest is one which members of the public might reasonably think could influence your actions, speeches or votes in the Council. An example of this might be membership of a society. You should consider whether such membership might lead members of the public to reasonably think it could influence your actions, speeches or votes in terms of paragraph 4.22. If so, you should register the interest.

52. You should consider erring on the side of caution. This may mean you register a large number of non-financial interests. If so, you are reminded that where a non-financial interest has been registered under Category eight of the Code, you must then declare this interest under section 5.7 of the Code (unless the interest is so remote or insignificant that it would not reasonably be taken to fall within the objective test). There is no suggestion in the Code that failing to register a non-financial interest under Section 4 can be remedied by declaring it.

53. You should bear in mind that the examples of possible non-financial interests given under paragraph 4.22 of the Code are illustrative only and do not represent an exhaustive list of potential non-financial interests.

54. In relation to paragraph 4.20 of the Code you will have a registerable interest as a trustee, whether or not jointly with other trustees, where you have an interest as a beneficiary of the trust and where the benefit is greater than 1% of the trust's value or the value of that benefit is greater than £25,000. An interest under shares and securities will also include investments made under self-invested pension plans.

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55. It is open to you to also declare what gifts and hospitality you decline, if you consider it may help put the gifts and hospitality you have accepted into perspective.

56. Annex B of the Code contains definitions of various terms used in Section 4, including 'remuneration', 'undertaking' and 'related undertaking'.

57. Where you have been appointed as a member of outside bodies (including where you have been nominated or appointed by the Council), you should ensure that such membership is registered in your Register of Interests either under Category one: Remuneration (if the position is remunerated) or Category eight: Non-Financial Interests (where the position is not remunerated).

58. There is no need to register being a councillor or member of a joint board, a joint committee or of COSLA.

Complaint alleged that two councillors failed to register their ownership or interest in a number of properties. Although the councillors stated they had made an honest mistake, it was determined that seeking advice did not exonerate them of responsibility to comply with the Code and due diligence would have shown that the Code, read with the Standards Commission's Guidance to the Councillors' Code of Conduct, required registration of properties in Scotland. The councillors were found to have breached the Code.

Complaint alleged that a councillor had failed to properly register and regularly review his remunerated interests and had also failed to register his non-financial interests. The councillor had completed his Register of Interests but had done so retrospectively on an annual basis. It was found that by failing to correctly apply the requirements of the Code and timeously record his remunerated employment and provide details of directorships he had not complied with the key principles of openness and integrity which underpin the actions of councillors when they make decisions on council business. The information provided in the Register of Interests was inadequate and denied any member of the public the opportunity to consider whether his interests could influence the decision making process. The councillor was found to have breached the Code.

Councillor failed to take steps to register her remunerated employment as an office manager for a MSP within one month of her contract commencing. The councillor had publicly announced, via a posting on a social media site, that she would now be working for the MSP and it was accepted, therefore, that there had been no deliberate attempt on her part to conceal her employment. However, the requirement to register remunerated employment is an integral part and absolute requirement of the Code as it provides the opportunity for openness and transparency in a councillor's role and affords members of the public the opportunity to consider whether a councillor's interests may or may not influence the decision-making process. As such, the councillor was found to have breached the Code.

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A councillor failed to include in her Register of Interests a property, despite having become a part owner of the property before being elected. The councillor considered she had not needed to register an interest in the property as there continued to be a life-rent over it in favour of the previous owners. However, while the councillor's interest in the property was limited until the end of the life-rent, the land register title nevertheless demonstrated that she was a part owner. As such, the councillor should have registered her interest in the property. She had failed to do so and, was found to have breached the Code.

Complaint alleged a councillor had failed to register a non-financial interest in a local community group for a number of years, and did not declare his association with them when supporting grant funding for that group. He was found to have breached the Code.

SECTION 5: **DECLARATION OF INTERESTS**

5.1 The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at meetings which you attend. The rules on declaration of interest, along with the rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

5.2 It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.

5.3 You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is *whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

5.4 Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings.

The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

59. Where your only interest is in relation to an item included in a committee minute which is being laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.

60. The **objective test** outlined in paragraph 5.3 assumes that a member of the public has knowledge of the relevant facts. The question you need to consider is whether a member of the public, with this knowledge, would reasonably regard the interest as so significant that it would be likely to prejudice your discussion or decision-making in your role as a councillor. Whenever you are considering potential declarations of interest, you should also apply the objective test.

61. Paragraph 5.4 makes it clear that you must disclose or declare your personal interests both in formal and informal dealings with Council officers and other councillors, not just in formal Council or committee meetings. This is an important consideration especially when you are seeking advice from Council officers or other sources.

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Interests which Require Declaration

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

Your Financial Interests

5.6 You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registrable under any of the categories prescribed in Section 4 of this Code and any interest as defined in a specific exclusion defined in paragraph 5.18).

There is no need to declare :-

(i) an interest where a general exclusion, as defined in paragraph 5.18, applies but an interest where a specific exclusion applies must be declared; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

(i) an interest covered by a general exclusion or a specific exclusion; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

62. In cases where no general or specific exclusion applies, if you consider the objective test is met, you should declare your interest and leave the meeting for the duration of the item under discussion / decision. You must NOT remain in the room once you have made your declaration.

63. If you consider the objective test is not met, you do not need to make a declaration and can take part in the discussion / decision.

64. Occasionally, in the interests of transparency you may decide that you wish to explain to the meeting that you have considered the matter in question and reached the conclusion the objective test is not met and therefore you can take part in the item under discussion / decision. For example, if you are aware that a member of the public could have an incorrect perception that you have a conflict of interest when you are satisfied you do not.

Complaint alleged that councillors had participated in a meeting in which they proposed and seconded a motion to ratify proposals to amend school catchment areas. They had failed to declare financial interests which could arise due to the potential impact the proposed changes would have on the

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catchment areas and this would affect the value of their homes. The Commissioner for Ethical Standards in Public Life in Scotland determined that in one case the complaint was flawed as the amendment would result in one councillor's home being outwith the catchment area for the school. In the other case, there was no evidence to support that a change in a school catchment area would have on the value of home in the area and that any suggestion of increase in house values did not represent a financial interest which fell to be declared in terms of the Code. The Commissioner for Ethical Standards found that, as such, no breach of the Code had occurred.

Complaint alleged a councillor who had been appointed to represent the Council on a Stakeholder Group had participated in a discussion on review of child health and medical services in the Council area at a meeting of the Stakeholder Group, despite being aware that his employer, who was a MSP, had an interest in retaining certain services under consideration, which had included raising the issue in the Scottish Parliament and making public statements in the press. The councillor had failed to apply the objective test as, had he done so, he would have realised that in raising issues and concerns that were similar to those raised by his employer, a member of the public might have perceived him as being influenced by his employer. It was determined that the nature of an employee / employer relationship could not reasonably been considered to be remote or insignificant. The councillor should have had regard to the objective test and declared a financial interest under paragraph 5.6. He should also have declared the non-financial interest of his employer, as required under paragraph 5.12. The councillor was found to have breached the Code through his failure of not applying the objective test and also not declaring his employers non-financial interest.

Your Non-Financial Interests

5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-

(i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or

(ii) that interest would fall within the terms of the objective test.

There is no need to declare:-

(i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

(i) an interest covered by a general exclusion or a specific exclusion; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.8 As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a councillor. Your membership of statutory Joint Boards or Joint Committees which are composed exclusively of councillors does not raise any issue of declaration of interest in regard to Council business.

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In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of

interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.18 of this Code about your legal responsibilities to any limited liability company of which you are a director.

5.9 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a councillor. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest, you should consider whether your interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a councillor as opposed to the interest of an ordinary member of the public.

65. You should be aware that you may have a non-financial interest if the organisation you are associated with has a financial interest, even if you do not have a personal one.

66. When deciding whether or not to make a declaration about a direct non-financial interest you should determine:

- Does a general exclusion apply? If so, there is no need to declare.
- Does a specific exclusion apply? If so, you must declare and consider whether the matter being discussed is regulatory or quasi-judicial in nature before deciding whether or not you need to withdraw.
- Is the interest too remote or insignificant to fall within the objective test? If so, there is no need to declare.
- Have you checked the status of the other body you are serving on? Have you registered the interest? If so, you must declare it. You must also withdraw unless the interest is too remote or insignificant to fall within the objective test.

67. If you are unclear as to whether another body you are appointed to and/or serve on falls within the specific exclusions outlined in paragraph 5.18(2) of the Code (and, for example, is a devolved public body, is a public body established by enactment or is a company established wholly or mainly to provide services to the Council), you should seek advice from the Council's Monitoring Officer. An up to date list of devolved public bodies as defined in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 can be found at www.legislation.gov.uk/ asp/2000/7/contents.

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68. You should declare your interest even if the body you are appointed to and/or serve on falls within the specific exclusions unless you believe, in the particular circumstances, the nature of the interest is so remote or insignificant it should not be declared. However, you only need to withdraw from the meeting if the matter being discussed is quasi-judicial or regulatory in nature (see paragraph 5.18(2)).

69. In terms of paragraph 5.9, you should be aware of the impact of any membership of other bodies, societies and organisations. You should consider whether your membership could lead members of the public to reasonably think it might influence your actions, speeches or votes in terms of paragraph 4.22. Unless you consider the interest to be so remote or insignificant, you should declare the membership.

70. Unless covered by a specific exclusion under paragraph 5.18(2), in issues involving funding from the Council to another body, society or organisation there can be no dubiety. You must declare an interest if you are a member of the body receiving the funding.

71. You should not rely on Council officers to remind you of the need to declare interests. It is not always apparent to officers when councillors are appointed to or serve on other groups and/or they may not remember all individual councillors' individual appointments. It is your own personal responsibility to ensure you declare any interests as required by the Code. If you are in any doubt, you should ask for help.

72. Factors to consider:

- Do you know the current status of the other organisation you are appointed to and/or serve on (for example, is it a charity or a Schedule 3 public body)? Has this changed?
- Do you know the composition of the organisation and how it is funded?
- Do you know whether the organisation was established wholly or mainly for the purpose of providing services to the council?
- If you are appointed to an ALEO, are you still able to undertake the scrutiny role?
- Have you considered the different responsibilities of being a member of both organisations and whether there are any conflicts?
- Could a decision coming before a meeting of the Council reasonably be considered by a member of the public to benefit or disadvantage you to a greater extent than other constituents?

Complaint alleged that a councillor had accepted hospitality (a dinner) from a parent company of an applicant firm who were awaiting the outcome of a planning application and had participated in consideration of the application in respect of a wind farm. It was found that no application was awaiting decision in the period between receipt of the invitation and attending the dinner. In addition, there was evidence the councillor had checked that there were no applications before accepting and had registered the hospitality within one month. No breach of the Code was found by the Commissioner for Ethical Standards in Public Life in Scotland.

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Complaint alleged that a councillor had participated in discussion and voting on an application, when he should not have, due to a registered financial interest and a registered non-financial interest. It was considered that the objective test would have applied and, indeed, the councillor confirmed that his voting on the decision was directly related to his interests. It was determined that the councillor had breached the Code.

Complaint alleged that a councillor who was employed on a remunerated basis by an organisation, took part in an item at a meeting and seconded the motion to approve a proposal in which he had a financial interest. There had not been any reference in the agenda for the meeting to the involvement of the organisation in the proposal and the paper itself made only a single mention of it. The councillor was found to have breached the Code, even though he had acknowledged his error immediately after the meeting.

Complaint alleged that a councillor, in his role as Chair of a Planning Committee had considered a planning application to which the Kirk Session and the Minister of the Church had objected, despite the councillor also being a member of the Kirk Session. It was accepted that discretion may exist in Section 5.7 to allow a councillor to consider whether their interest to be too remote. However, in registering the non-financial interest it was clear the councillor regarded his interest in the Church as significant. It was considered that it was unreasonable for the councillor to conclude that his membership of the Kirk Session was, therefore, insignificant to the role that he had to undertake as Chair of the Planning Committee. The determination was that the interest should have been declared. The councillor was found to have breached the Code.

The Financial Interests of Other Persons

5.10 The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

You must declare if it is known to you ANY FINANCIAL INTEREST of:-

(i) a spouse, a civil partner or a co-habitee;

(ii) a close relative, close friend or close associate;

(iii) an employer or a partner in a firm;

(iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;

(v) a person from whom you have received a registrable gift or registrable hospitality;

(vi) a person from whom you have received registrable election expenses.

There is no need to declare an interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

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You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

(i) an interest covered by a specific exclusion; or

(ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.11 This Code does not attempt the task of defining "relative" or "friend" or "associate". Not only is such a task fraught with difficulty but is also unlikely that such definitions would reflect the intention of this part of the Code. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor and, as such, would be covered by the objective test.

The Non-Financial Interests of other persons

5.12 You must declare if it is known to you ANY NON-FINANCIAL INTEREST of:-

(i) a spouse, a civil partner or a co-habitee;

(ii) a close relative, close friend or close associate;

(iii) an employer or a partner in a firm;

(iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;

(v) a person from whom you have received a registrable gift or registrable hospitality; or

(vi) a person from whom you have received registrable election expenses.

There is no need to declare the interest unless it is clear and substantial.

There is only a need to withdraw from the meeting if the interest is clear and substantial.

73. You should consider whether a decision coming before a meeting of the council might reasonably be considered by a member of the public to benefit or disadvantage a person or body who falls within one of the categories under paragraph 5.12 to a greater extent than other constituents.

74. You should be mindful of the need to protect the confidentiality of another person's business or financial interests when making a declaration. You are only required to provide enough information to make it clear why you consider you have a clear and substantial interest.

Complaints alleged a councillor had failed to declare his non-financial interests and the non-financial interests of close relatives

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in relation to involvement with a school lobbying group after a planning application to build a new school had been submitted and the formal planning process was underway. The councillor had incorrectly assumed that officers were fully aware of his, and also the interests of his family, in the lobbying group. It was noted councillors should ensure that all relevant information is provided to officers when advice is sought so councillors can be assured the advice given is fully informed and comprehensive. The councillor was found to have breached the Code.

Making a Declaration

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

5.14 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words "I declare an interest". The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

75. When making a declaration and/or deciding whether or not to do so you should consider the following factors:

- Is the information you are giving sufficient for those at the meeting to understand why you are making a declaration. For example, it may be sufficient to say I declare an interest as my spouse is a member of the organisation making the application. You might not necessarily need to provide details about how long your spouse has been a member and in what capacity.
- Transparency. For example, you may wish to think about whether you should indicate why you have considered making a declaration but have chosen not to on the grounds it is not clear and substantial. If you only realise a declaration is necessary when the discussion in respect of a matter is underway, you may wish to consider whether you should provide a brief explanation why you had not realised you had an interest at the outset of the meeting.

Frequent Declarations of Interest

5.15 Public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings of a particular committee or in respect of any role which you are asked to discharge as a councillor, you should not accept a role or appointment with that attendant consequence. Similarly, if any Council appointment or nomination to another body would give rise to objective

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concern because of your existing personal involvements or affiliations, you should not accept the appointment or nomination.

76. Where the only interest is in relation to an item included in a committee minute which is being laid before the Council for formal approval, no declaration is required unless the item proceeds to be discussed or debated as a substantive issue.

77. You are reminded that, when considering whether a declaration of interest is appropriate or the effect of making a declaration in terms of the actions you are then required to take, you should refer to the full provisions of the Code.

Complaint alleged that, in view of the frequency of declarations of interest made by a councillor, he should have declined to sit on the Planning Applications Committee. In the 12 months since the councillor had been nominated to sit on the Planning Applications Committee he had attended 16 meetings, considered 93 planning applications and declared an interest in eight of these. It was determined that the number of declarations made by the councillor was not such as to prevent him voting on a regular basis or otherwise to preclude him from sitting on the Planning Applications Committee. No breach of the Code was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Dispensations

5.16 In some very limited circumstances dispensations may be granted by the Standards Commission in relation to the existence of financial and non-financial interests which in terms of this Code would otherwise prohibit participation in discussion and voting.

5.17 Applications for dispensations will be considered by the Standards Commission which will be able to consider requests for dispensations which will apply generally to a class or description of councillors who are all affected by a particular category of interest. In situations where general or category dispensations are not granted by the Standards Commission, applications for particular dispensations should be made as soon as possible in advance of any meetings where dispensation is sought. You should take no part in consideration of the matter in question unless, and until, the application for dispensation is granted.

78. In such circumstances, applications should be submitted to The Executive Director, The Standards Commission for Scotland, Room T2.21, The Scottish Parliament, Edinburgh, EH99 1SP, setting out in detail all the relevant information, including the reasons why a dispensation is sought. Factors to consider before making the application include:

- whether it would be in accordance with both the spirit and intent of the Code of Conduct to grant the dispensation; and
- whether you have provided sufficient reasons for the request, including what the effect or consequence would be if it was not granted.

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79. The Standards Commission will respond as soon as it reasonably can after receipt of all information and will normally be able to provide a response within 20 working days. Where an application for dispensation relates to a specific item of business, the Standards Commission will endeavour to respond before the meeting in question. However, Standards Commission Members only work on a part time basis so this may not always be possible and, therefore, applications should be submitted to the Standards Commission as soon as the relevant information / circumstances are known.

Definition of Exclusions

5.18 The following paragraphs refer to General Exclusions and Specific Exclusions

(1) <u>The General Exclusions</u>

The general exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:-

(i) as a Council tax payer or rate payer or in relation to the Council's public services;

(ii) in relation to setting the Council tax;

(iii) in relation to matters affecting councillors' remuneration, allowances, expenses, support services and pension; or

(iv) as a Council house tenant.

In relation to (i), a councillor does not have an interest which has to be declared as a Council tax payer or ratepayer or, in respect of any issue relating to the terms of services which are offered to the public generally, as a recipient or non-recipient of those services.

In relation to (ii), a councillor does not have a financial interest which has to be declared in connection with:-

(a) the setting of council tax (including the approval of the total estimated expenses of the authority to be incurred during the year in question); and

(b) the setting of any substitute Council tax (including the approval of any revised total estimated expenses).

not withstanding that the councillor may have an interest in any item of expenditure.

In relation to (iii), a councillor does not have an interest which has to be declared in connection with any matter relating to councillors' remuneration, allowances, expenses or support services or in relation to councillors' pension arrangements, including the investment of superannuation funds.

In relation to (iv), a councillor does not have an interest which has to be declared in connection with any matter relating to council house matters, notwithstanding that the councillor has an interest in the tenancy of council housing accommodation (including any garage), always provided:-

(a) this exclusion does not apply in respect of any matter which is concerned solely or mainly with the particular tenancy

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from which an individual councillor's interest derives; and

(b) this exclusion does not apply to any councillor who is in arrears of rent in respect of his or her council house (or garage as appropriate).

(2) The Specific Exclusions

The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:-

(i) as a member, or director of, an outside body; or

(ii) as a member of the Cairngorms National Park Authority ("CNPA").

In relation to (i), the exclusion applies to any councillor who has been nominated or appointed or whose appointment has been approved by the councillor's local authority and who has registered an interest under Section 4 of the Code as a member or director of:-

(a) devolved public body as defined in Schedule 3 to the Act;

(b) a public body established by enactment or in pursuance of statutory powers or by the authority of statute or a statutory scheme;

(c) a body with whom there is in force an agreement which has been made in pursuance of Section 19 of the Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that body of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise;

(d) a body being a company:-

i. established wholly or mainly for the purpose of providing services to the councillor's local authority; and

ii. which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority.

So as to enable the councillor to take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question the councillor is required to declare his or her interest at all meetings where matters relating to the body in question are to be discussed. This is always provided the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.

In relation to (ii), the exclusion applies to (a) Decisions on Planning Applications where the CNPA have submitted comments to the Council and (b) Decisions on Planning Applications where the CNPA have decided not to call-in the Applications, as follows:-

(a) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have submitted

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comments, representations or objections to the Council in relation to a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-

i this exclusion only applies where the councillor has not participated in the decision to make comments, representations or objections and has not attended during the item of the relevant CNPA meeting to decide on the comments, representations or objections to be submitted.

ii this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

(b) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have decided not to call-in a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-.

i. this exclusion only applies provided the CNPA have, in reaching their decision not to call-in, confined themselves to the question whether the application should be called-in and not discussed the merits of the application in so deciding.

ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

80. The list of bodies to which a councillor may have been nominated or appointed and to which the specific exclusions apply is exhaustive (set out in paragraph 5.18(2)(a)-(d)). This means that a declarable interest would require a withdrawal from the meeting if not covered by an exclusion. For example, if you have been appointed by your council as a member of a charity, you cannot claim the benefit of a specific exclusion (as the specific exclusions do not include appointments to charities) unless the charity in question also falls within one of the exclusions (for example if it is also a company established wholly or mainly for the purpose of providing services to the local authority).

81. If you have any doubts about whether a body you have been appointed to is covered by a specific exclusion (for example whether it is a public body established by enactment or in pursuance of statutory powers or whether it is a company which has entered into a contractual arrangement with your local authority for the supply of services to your local authority), you should always check before accepting an appointment.

82. You should be mindful of the specific responsibilities you have to different bodies and be aware of the potential for conflicts of interests between your different roles, even if another body you sit on is covered by a specific exclusion.

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83. You should always declare your interest in all meetings where matters relating to or concerning the body in question are to be discussed. However, you can take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question provided you are satisfied that the matter is not quasi-judicial or regulatory in nature. You should nevertheless be mindful that even if a specific exclusion applies, you are still required to declare any other personal interest you may have other than the interest that arises simply through your membership of a body covered by a specific exclusion. If you do have any other interest, you must comply with the objective test.

SECTION 6:
LOBBYING AND ACCESS TO COUNCILLORS

6.1 In order for the Council to fulfil its commitment to being open, accessible, and responsive to the needs of the public, it needs to encourage appropriate participation by organisations and individuals in the decision-making process. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the Council conducts its business.

6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual councillors or Council committees. The rules and standards in this Code set out how you should conduct yourself in your contacts with those who seek to influence you.

6.3 You may be lobbied by a wide range of people including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the Council or a councillor. However, particular considerations apply when you are dealing with applications under regulatory powers such as planning and with matters of a quasi-judicial nature such as the determination of certain licence applications. If you are lobbied on such matters you should make it clear that you are not in a position to lend support for or against any such application that you will have a responsibility for making a decision on in due course. Representations to councillors on such applications should be directed, by the councillor, to the appropriate department of the Council. This does not prevent you from seeking factual information about the progress of the case.

6.4 Political group meetings should not be used to decide how councillors should vote on such applications, or on individual staffing matters such as the appointment or discipline of employees. It is a breach of this Code to comply with political group decisions on such matters where these differ from your own views.

84 As a councillor you will probably be approached by those wishing to make their views known. This is perfectly legitimate, and should be encouraged, in that it is an essential part of the democratic process that any individual should be allowed to lobby a council or councillor.

- If you choose to be an advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause. If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support or make a decision until the appropriate meeting, when you have heard all the evidence. You can:
  - Make it known to officers what representations you have received;
  - Assist constituents in making their views known to the relevant officer;
  - Seek factual information about the progress of a case;

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- Advise those that are lobbying who they can contact (i.e. the relevant officer or a councillor who is not on the decision-making committee).

85. However, you must not accept any paid work in which you give advice on how to influence the Council. In other situations, care is needed and you should be guided by the Code and, in particular, consider:

- Could anything you do or say be construed as being improperly influenced to take a particular stance on an issue?
- Are you giving, or could you be perceived as giving, preferential access to any one side of an argument?
- When seeking information on the progress on a case or particular matter are you doing so in a factual way or could you instead be perceived as making representations or lending support?
- Are you reaching your own view on an application or staffing matter having heard all the relevant arguments and evidence (including the guidance of Council officials) and not simply agreeing or complying with any view expressed by your political group?

Complaint alleged that a councillor failed to engage with, and denied access to, a constituent who had sent an email to the Council seeking information on a motion which had been promulgated by the councillor and approved by the full Council. The Council had referred the individual's email to the councillor for response. The individual considered the councillor's response and subsequent comments in the press which indicated he did not wish to engage with her. However, the Code does not impose specific obligations on individual councillors requiring that a response is made to all who would lobby them. In this case the councillor had responded, albeit that his response was made in terms which the complainant found unacceptable. The Commissioner for Ethical Standards in Public Life in Scotland found that there had not been a breach of the Code.

Complaint alleged that a councillor had been involved in a "secret" meeting with some local residents. The outcome of the "secret" meeting resulted in a Traffic Regulation Order which ultimately led to the introduction of parking restrictions. In attending this "secret" meeting the complainant alleged that the councillor had failed to be accessible to the public and showed bias towards some residents. The Commissioner for Ethical Standards established the councillor had been accompanied at the meeting by an officer from the Council's Roads Services and it was the officer's suggestion of implementing a TRO which resulted in the road traffic controls being introduced. No evidence was found that the councillor had indicated support for or against the making of the TRO. The councillor's only role was to attend the meeting with some local residents with a Council Officer. The Commissioner for Ethical Standards found that no breach of the Code had occurred.

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

Introduction

7.1 The Code's provisions relate to the need to ensure a proper and fair hearing and to avoid any impression of bias in relation to statutory decision making processes. These provisions apply not only to those made under planning legislation but to a number of others of a quasi-judicial or regulatory nature which the local authority may also have to consider. These will include applications for taxi, betting and gaming, liquor, theatres, cinemas and street trader licences and a range of other similar applications where the issuing of a statutory approval or consent is involved. This also includes where the local authority is acting in an enforcement, disciplinary or adjudicatory role.

86. The list under paragraph 7.1 is illustrative and not exhaustive. If you are in any doubt about whether an application or matter you are being asked to decide on is quasi-judicial or regulatory in nature, you should seek advice before taking part in any discussion or vote. While the focus of the following paragraphs is primarily on planning matters, the provisions contained within them also apply to other regulatory applications where statutory approval or consent applies.

Fairness and Impartiality

7.2 On questions relating to such matters on which councillors have to make individual decisions, you may have to take account of different points of view or make decisions based on specified statutory criteria.

7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

7.5 Councillors who have been appointed to outside bodies may - in certain circumstances - be entitled to participate in discussion and voting on matters relating to these bodies through the benefit of the specific exclusion relating to certain outside bodies as provided for in paragraph 5.18(2) of Section 5 of this Code. It should be emphasised, however, that the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the outside body is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is subject of a statutory order of regulatory nature, made, or proposed to be made, by the local authority.

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

87. When making quasi-judicial or regulatory decisions, you must do so objectively and with an open mind. Factors to consider include:

- Am I acting fairly?
- Have I taken proper account of the public interest?
- Have I taken account of all the material and relevant facts, evidence, opinions and policies?
- Have I taken account of advice from council officers who are exercising their statutory duties and functions?
- Am I able to give clear and adequate reasons for my decision if required?
- Have I indicated, outwith the committee forum, my support for, or opposition to, the matter which I am due to make a decision on?

88. If you have been appointed to an outside body you may - in certain circumstances - be entitled to participate in discussion and voting on matters relating to that body through the application of a specific exclusion defined in paragraph 5.18 of the Code. It should be emphasised, however, that the specific exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature. For example, if you have been appointed by your council to an outside body and that body has submitted an application to the Council for a theatre licence, you cannot take advantage of the specific exclusion. You must declare your interest and withdraw from the room.

A councillor, as a member of the Council's Licensing Committee, made comments to the press which demonstrated that he had pre-judged a House of Multiple Occupation (HMO) licence application, before it had been heard by the Committee. The councillor had voted against the license being granted at the Licensing Committee meeting and, in doing so, he had failed to avoid any appearance of improper conduct, which would have reduced the risk of the Council's decision being legally challenged. The councillor had also subsequently taken part in a vote, at a later meeting, on whether the Council should defend a legal appeal taken against its decision to refuse the HMO application, despite knowing that officers and the Convener had expressed concerns about his participation in the item at the initial meeting, and that as he had been individually identified in the subsequent appeal, he was perceived as having prejudged the matter. The councillor should, therefore, have withdrawn from both meetings and taken no part in the discussion or decision-making on the item at either. He had failed to do so and, was found to have breached paragraphs 7.1, 7.3 and 7.4 of the Code.

Complaint alleged that a councillor, in his role as a member of a Licensing Board, stated that he was minded to support the application before the Board had heard all submissions, which indicated he had pre-judged the matter. He was also disrespectful of members of the public who were present as objectors when he questioned them in a confrontational and adversarial manner and was dismissive of their views. Following the Licensing Board decision, a petition for Judicial Review was made seeking reduction of that decision. The petition, which included an account of the conduct of the councillor, was based on grounds

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that objectors were not afforded a fair hearing. The petition was granted by the Court and legal costs awarded against the Licensing Board. It was found the councillor had breached paragraphs 7.1 - 7.4 of the Code.

Decisions on Planning Matters

Policy and Strategic Issues

7.6 The requirements of this part of the Code should not limit you from discussing or debating matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided.

7.7 Therefore in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and masterplans prepared for specific sites in anticipation of planning applications.

7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.

89. Where a Council has been asked to provide a provisional view on whether, in respect of a proposal for a major development, it might be minded in principle to consider granting planning permission, you are entitled to express an opinion in advance of the statutory application being submitted. However, you may only do so as part of the Council's procedures for forming such a provisional view. You must not express a view or an opinion once a planning application has been received as this could be determined to having compromised your impartiality.

90. You should ensure that you are familiar with your council's policy on forming provisional views and that you adhere to this.

91. You can adopt an advocacy role by, for example, saying you would welcome planning applications or the redevelopment of an area, or would like to preserve greenbelt land or promote industry. However, you cannot then comment on a specific application once lodged, before the meeting to determine it.

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General

7.9 As a councillor you may have to deal with planning decisions in a number of ways. You may:-

(i) become involved in local cases as a ward representative; or

(ii) you may be more actively involved in decision making:-

(a) as a member of a committee dealing generally with decisions on planning applications;

(b) in certain cases, you may be a member of the committee where applications are subject to a pre-determination hearing;

(c) as a member dealing with applications referred to the full council for determination; and

(d) as a member of the Council's Local Review Body dealing with reviews where officers acting under delegated authority have refused planning permission or granted it subject to conditions which the applicant does not agree with or of non-determination of the application by the officer; or have not dealt with the application within the prescribed timescale.

7.10 You must never seek to pressure planning officers to provide a particular recommendation on any planning decision and you should not seek privately to lobby other councillors who have a responsibility for dealing with the application in question.

7.11 If you propose to take part in the decision making process you must not give grounds to doubt your impartiality. You must not make public statements about a pending decision, to ensure that you are not seen to be prejudging a decision which will be made at the meeting where it can be anticipated that the information required to take a decision will be available. You must not indicate or imply your support or opposition to a proposal, or declare your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

7.12 If you have an interest, whether financial or non financial, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, or in a Local Review Body, you must declare that interest and refrain from taking part in making the decision.

92. If you have an interest as outlined in paragraph 7.12, you must declare that interest, take no part in the decision and withdraw fully from the room. If you remain in the room, you could be perceived as trying to influence others. However, having declared your interest in the matter, you are entitled under paragraph 7.15 below to make representations on behalf of constituents or other parties before you fully retire from the meeting room.

93. Although you are entitled to hold a preliminary view on a matter in advance of a meeting at which a decision will be taken, you must keep an open mind and be prepared to consider the merits of all views and

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representations made about the matter under consideration before making your decision. You must not make your mind up about a particular matter before you have had the opportunity to consider all the evidence.

94. Prejudging or making a pre-determination may invalidate the Council's decision and leave it open to challenge as well as being a breach of the Code. For example, if you state that 'wind farms are blots on the landscape and I will oppose each and every one that comes before the committee' you cannot claim to have retained an open mind on the issue or that you are prepared to determine each application on its merit. If, however, you say 'some people find wind farms ugly and noisy so I will need to be persuaded we should allow more in this area', you should not be accused of having pre-judged the application as you have demonstrated you are willing to listen to the merits of an application.

95. The prohibition on pressuring planning officers or lobbying other councillors in private under Paragraph 7.10 applies to all correspondence, not just discussions. For example, it would be a breach of the Code to send an email to other councillors indicating that you are against plans for a stadium development once a planning application had been lodged.

Complaint alleged that a councillor had sought preferential treatment in regard to the requirement to apply for consent before erecting a radio mast. It was found that on being advised that consent was required the councillor submitted the necessary application, and at the hearing of the application at the Regulatory Committee he declared an interest and took no part in its consideration. The fact that he was the applicant was evident to the remaining members but there was nothing to indicate that the councillor sought to influence them in any way. The Commissioner for Ethical Standards in Public Life found that the councillor had not breached paragraph 7.11 or 7.12 of the Code.

Complaint alleged that while serving on the Council's Planning Committee, a councillor became involved in a proposed agreement between a planning applicant and two local community councils. The councillor reached the view that his interest going forward was to represent his constituents and that this would be contrary to maintaining his position as a decision maker on the application. Subsequently, when a report was submitted to the Planning Committee, the councillor declared an interest and left the room. It was found that the councillor was fully entitled to take the steps he had and that he was being properly mindful of appropriate conduct and his Code obligations in doing so. No breach of the Code was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Representations

7.13 Where you will be participating in making the appropriate decision, you should not organise support for, or opposition to, or lobby other councillors

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or act as an advocate to promote a particular recommendation on a planning application, on a planning agreement, on taking enforcement action, or on a review by the Local Review Body.

7.14 You are not precluded from raising issues or concerns on any of the matters associated with the application with the planning officers concerned. Indeed, a councillor may well have an important contribution to make in respect of an individual planning application or on what the Council should include in a planning agreement. It is entirely appropriate for councillors, including those who will have a decision making responsibility, to make known to planning officers what representations from constituents and prospective developers they have received on a planning application, to attend public meetings/events (including those relating to statutory pre-application consultation) and to assist constituents in making their views known to the relevant planning officer. This applies to those councillors with a decision making responsibility, provided that at no time does the councillor express a "for" or "against" view by advocating a position in advance of the decision making meeting (other than in respect of the circumstances set out in paragraphs 7.8 and 7.18).

7.15 If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so providing:-

(i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so;

(ii) you declare your interest in the matter; and

(iii) after making those representations you then retire from the meeting room.

96. Paragraph 7.15 applies to all councillors, irrespective of whether or not they are part of the decision making process. Where you wish to make representations on behalf of constituents or other parties, you may do so providing that all the conditions outlined above are met, including that you declare your interest in the matter and, having made any representations, you retire fully from the meeting room (it is not sufficient to retire to a public gallery situated within the meeting room).

97. If you are making representations and, for example, you wish to support your constituents' views regarding a planning application, you should make this position clear as soon as possible to the chair of the committee and officers. Your declaration of interest should be recorded in the minutes of the meeting.

Complaint was at a meeting of a Planning Committee, a councillor attempted to influence other members of the committee in their consideration of the application by suggesting a site visit. It was found that the councillor had simply suggested a site visit but there as no evidence he had attempted to influence other members of the planning committee in their consideration of the application. Suggesting a site visit in itself did not constitute inappropriate lobbying

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or influence. No breach of the Code was found by the Commissioner for Ethical Standards in Public Life in Scotland.

Full Council Decisions

7.16 There are certain planning applications where the final decision has to be made by the full Council. These applications will be those where there has been the opportunity for a pre-determination hearing. These procedures apply to major developments which are significantly contrary to the development plan and for national developments. It will be apparent before the application is formally submitted to the Council which developments are national or major. Where the application is for a national development you will be involved in the decision making process as a member of the full Council.

7.17 Where the application is for a major development, it may not be clear at the outset whether the development is significantly contrary to the development plan and therefore one where the full council will be making the final decision. It will be for the planning authority to come to such a view as part of considering the application.

7.18 You are entitled to take part in the decisions to be made by the full Council even though you may have expressed an opinion on the application at a pre-determination hearing or at the planning committee.

98. Where the decision in respect of a planning application or other regulatory decision has to be made by the full Council and you have expressed opinions on the application at a pre-determination hearing or at a previous planning committee, you are entitled to take part in the decision making by the full Council provided you do so with an open mind. However, this applies only to opinions expressed at a pre-determination hearing or at a previous planning committee.

Local or Area Planning Committees

7.19 All local authorities will have their own procedures for dealing with planning applications. Councils may adopt a system in which most applications are dealt with by local or area planning committees with the remaining being dealt with by a central planning committee. Some also have procedures where decisions can be referred from a planning committee to the full Council for final determination.

7.20 Individual members may make their provisional views known as part of the discussions at earlier meetings. Councillors who have responsibility for the decision should only make a final judgement when all the relevant material considerations are before the meeting that will, in fact, determine the application. These considerations can quite appropriately include the views of a local or area committee for a central planning committee, or the views of a planning committee or a pre-determination hearing in advance of the full Council.

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99. Where Council procedures allow for decisions to be referred for final decision by a planning committee, including a local or area planning committee, to the full Council or other committee, you may make your provisional views known but only as part of the discussions during the earlier meetings.

100. As a member of a planning committee you should make a decision in the public good and not represent any private interest.

101. You should familiarise yourself with the Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures which can be found at http://www.gov.scot/Topics/Built-Environment/planning/Roles/Planning-Authorities/Documents.

A complaint alleged that a councillor had pre-determined his decision about a planning application prior to his involvement with a Planning Hearing. The complaint was the councillor had referred to a press article, published before the Hearing, which extolled the beauty of the Scottish landscape, together with stating his own personal opinion about the impact of noise generated by wind turbines, based on his own experience. It was alleged the councillor had therefore shown bias and predisposition in relation to a planning application, which was suggestive of the councillor having made up his mind about his decision prior to the Planning Hearing. The Commissioner for Ethical Standards considered that whilst it may have been suggestive that the councillor may have formed a view a few days before the Hearing is not conclusive evidence that the impact on the landscape of a wind farm development was his only consideration in preparing for the Planning Hearing. While the councillor expressed an opinion about the noise nuisance he had not pursued this aspect following an assurance from a council officer that the turbines met the required noise emission standards. The conclusion of the Commissioner for Ethical Standards was that no breach of the Code was established.

Other Interests

7.21 If you have substantial property or other interests which would prevent you from voting on a regular basis you should not sit on a decision-making committee that deals with planning applications.

7.22 You must not act on behalf of, or as an agent for, an applicant for planning permission with the Council other than in the course of your professional role which you have registered.

Site visits

7.23 As a councillor, you may be asked to attend site visits in connection with a pending planning application or review. If you do so, you should follow the procedures for such visits set out by your authority - for local reviews there are details about site visits in the relevant regulations. These procedures should be consistent with the provisions of this Code.

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102. The Code recognises that individual councils will have their own procedures for site visits and does not attempt to be prescriptive about what these procedures should include. However, when attending site visits, you must follow your council's own procedures for such visits.

Unauthorised developments

7.24 As a councillor you may also be the person who is first made aware of unauthorised development and you might - quite properly - wish to refer the matter to the Council for possible enforcement action. Once the initial referral has been made to the appropriate department for investigation and any formal action, you should advise all subsequent inquirers to deal directly with the relevant officer, as you should not lobby for a particular outcome. This does not prevent you from seeking factual information about the progress of the case.

103. You must not organise support or opposition, lobby other councillors or put pressure on planning officers to either take or not take investigative or enforcement action. This applies to all councillors, whether members of any planning committee or not.

ANNEX A:
SANCTIONS APPLIED BY STANDARDS COMMISSION FOR BREACH OF THE CODE

(i) Censuring the councillor;

(ii) suspending, for a period not exceeding one year, the councillor's entitlement to attend one or more but not all of the following:

(a) all meetings of the Council;

(b) all meetings of one or more committees or sub-committees of the council;

(c) all meetings of any other body on which that councillor is a representative or nominee of the council;

(iii) suspension, for a period not exceeding one year, of the councillor's entitlement to attend all meetings of the Council, and of any committee or sub- committee of the Council; and of any other body on which the councillor is a representative or nominee of the Council;

(iv) disqualifying the councillor, for a period not exceeding five years, from being or being nominated for election as, or from being elected as, a councillor.

A period of suspension under (ii) or (iii) above which would continue until or beyond an ordinary election will come to an end at the beginning of the day on which that election is held.

Disqualification of a councillor has the effect of vacating that councillor's office and extends to the councillor's membership of any committee or sub-committee of the Council, any joint committee, joint board or other body on which the councillor is a representative or nominee of the Council.

Where a councillor is a also a member of a devolved public body (as defined in the Ethical Standards in Public Life etc. (Scotland) Act 2000), 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.

ANNEX B: **DEFINITIONS**

1. **"Remuneration"** includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.

2. **"Undertaking"** means: (i) a body corporate or partnership; or (ii) an unincorporated association carrying on a trade or business, with or without a view to a profit.

3. **"Related Undertaking"** is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.

4. **"Parent Undertaking"** is an undertaking in relation to another undertaking, a subsidiary undertaking, if (i) it holds a majority of the voting rights in the undertaking; or (ii) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or (iii) it has the right to exercise a dominant influence over the undertaking (a) by virtue of provisions contained in the undertaking's memorandum or articles or (b) by virtue of a control contract; or (iv) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking.

5. **"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.

6. **"A person"** means a single individual or legal person and includes a group of companies.

7. **"Group of companies"** has the same meaning as "group" in section 262(1) of the Companies Act 1985. A "group", within s262(1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.

8. **"Any person"** includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.

9. **"Spouse"** does not include a former spouse or a spouse who is living separately and apart from you.

10. **"Cohabitee"** includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.

11. **"Chair"** includes Committee Convener or any person discharging similar functions under alternative decision making structures.

ANNEX C:
PROTOCOL FOR RELATIONS BETWEEN COUNCILLORS AND EMPLOYEES IN SCOTTISH COUNCILS

Principles

1. This protocol sets out the way in which Councils and employees of Councils should behave towards one another. It does not cover all the variety of circumstances which can arise, but the approach which it adopts will serve as a guide to dealing with other issues as they come up.

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.

Scope

3. The most common contacts are between councillors and senior employees at Chief Executive, Director or Head of Service level, and this protocol is largely about those contacts. There are also many contacts between councillors and other employees in their daily business, and the principles of this protocol also apply to them. The particular position of employees who provide direct support services for councillors is dealt with separately at paragraph 21.

Members' and employees' roles

4. Within a Council, councillors have a number of different roles, all of which call for separate consideration. Some councillors are chairs of committees, most belong to political groups, and all have a local ward to represent.

5. Legally, employees are employed by the Council and are accountable to it. Ultimately they serve the Council as a whole and not any particular political group, combination of groups or any individual member. Nonetheless, political groups exist in most Councils and employees may properly be called upon to assist the deliberations of political groups and also to help individual members in their different roles. Chief Executives and Senior Officers have ultimate responsibility to ensure that the Council's responsibilities are implemented.

Office bearers

6. It is clearly important that there should be a close professional working relationship between the Chair of a committee and the director and other senior employees of any service which reports 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 employees' ability to deal impartially with other councillors, and the ability of Chairs to deal impartially with other employees.

7. The Chair of a committee will often be consulted on the preparation of agendas and reports. Employees will always be fully responsible for the contents of any report submitted in their name and have the right to submit reports to members on their areas of professional competence. While employees will wish to listen to the views of conveners, they must retain final responsibility for the content of reports.

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8. Committee Chairs are recognised as the legitimate elected spokesperson on their committees' areas of responsibility. Where authority is delegated to employees they will often wish to consult Chairs of committees about the action which they propose to take but the responsibility for the final decision remains with the employee who is accountable for it. Chairs should bear this in mind when discussing proposed action with employees.

9. Committee Chairs will have many dealings with employees. Those employees should always seek to assist a committee Chair but it must be remembered that they are ultimately responsible to the Head of the Service.

Political groups

10. Most Councils operate through a system of groups of councillors, many of them based on political affiliation. All employees must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner. Employees must at all times, maintain political neutrality.

11. The support provided by employees can take many forms, ranging from the meeting with the Chair and vice-Chair before a committee meeting to a presentation to a full party group meeting. Whilst in practice such support is likely to be in most demand from whichever party group is for the time being in control of the Council, it should be available to all party groups. The advice given by employees to different party groups should be consistent.

12. Certain matters must, however, be clearly understood by all those participating in this type of process, councillors and employees alike. In particular:-

(i) Council rules about groups' access to employees, e.g. all requests being approved by the Chief Executive, must be followed;

(ii) employee support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. The observance of this distinction will be assisted if employees are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed;

(iii) party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;

(iv) where employees provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered;

(v) political groups need to recognise that information and advice given by employees should be used to enhance discussion and debate at Council and committee meetings. If such information is used for political advantage, for example media briefings beforehand, then the process could become devalued and place employees in a difficult position in giving information and advice; and

(vi) the chair of a political group meeting attended by employees has a responsibility for ensuring that those attending are clear on the status of the meeting and the basis on which employees are attending.

13. Special care needs to be exercised whenever employees are involved in providing information and advice to a meeting of a political group which includes persons who are not members of the Council. Such persons will not be bound by the Codes of Conduct for councillors and employees (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons employees may not be able to provide the same level of information and advice as they would to a members only meeting.

14. Any discussion with a political group or councillor must be treated with strict confidentiality by the employees concerned and should not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.

15. Should any difficulty or uncertainty arise in the area of employee advice to party groups, this shall be raised with the Chief Executive who should discuss the matter with the group leader.

Local representative

16. All councillors represent part of the area of the Council. Within each Council's rules about consultation and councillor involvement, employees must treat all councillors fairly and openly in their role as local representatives. When performing their local representative role, councillors will be seen by the public as representing the Council and should act in accordance with the principles of the Code of Conduct for Councillors and this protocol.

Communications

17. Communications between an individual councillor and an employee should normally not be copied by the officer to any other councillor. Where it is necessary to copy the communications to another member, this should be made clear to the original councillor at the time.

Appointments

18. Where councillors are involved in the appointments of employees they must act fairly and openly and judge candidates solely on merit.

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Social relationships

19. The relationship between councillors and employees depends upon trust and this will be enhanced by the development of positive, friendly relationships. Councillors and employees will often be thrown together in social situations within the community and they have a responsibility to project a positive image of the Council. Nonetheless, close personal familiarity between individual employees and councillors can damage the relationship of mutual respect and the belief that employees give objective and professional advice and commitment to the Council. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

104. Councillors should avoid raising any adverse matters about the conduct or capability of employees in public.

Employees supporting councillors

21. Where Councils arrange for employees to support members directly in carrying out their duties, particular considerations apply. Such employees are normally involved in administrative and practical support of councillors. While such staff may operate to the requirements of individual councillors in their daily business, it must be remembered that the employees are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.

105. Councillors should not become involved in issues relating to individual employees' pay or terms and conditions of employment, except while serving on a committee delegated to deal with such matters.

STANDARDS COMMISSION FOR SCOTLAND'S GUIDANCE FOR COUNCILLORS AND LOCAL AUTHORITIES IN SCOTLAND

THE ETHICAL FRAMEWORK: THE RELATIONSHIP BETWEEN THE COMMISSION AND COUNCILS

1. The promotion of high standards in public life is essential to ensure and reinforce public confidence in the activities and responsibilities of Councils.

2. The Standards Commission wishes to support the work of Councils in striving to achieve the highest standards of conduct and, with this in mind, wishes to make itself readily available to facilitate this.

3. The Standards Commission wishes to stress the importance which it attaches to Councils embracing the ethical framework and ensuring that they have effective support systems in place to assist councillors in applying high standards of conduct.

4. Councils are reminded of the importance of high standards of conduct as a key part of arrangements for corporate governance. In this connection, the Standards Commission commends the advice given by Audit Scotland in relation to the role of ethical standards within corporate governance in its Code of Audit Practice (March 2007).

5. Councils also have a part to play in ensuring that the public are made aware of the ethical framework in Scotland and how it is to be regulated and the Standards Commission advises Councils to facilitate the process by ensuring that information about the Act, the Councillors' Code of Conduct, and the roles of the Standards Commission and the Commissioner for Ethical Standards in Public Life in Scotland is widely available at their main offices. Councils should make this information available at all public libraries and provide the Code of Conduct directly, or through links, on their own websites.

THE DUTIES OF COUNCILS TO PROMOTE HIGH STANDARDS OF CONDUCT

6. All Councils have duties in terms of section 5 of the Act of:–
a) promoting the observance by their councillors of high standards of conduct; and
b) assisting them to observe the Councillors' Code of Conduct.

Code of Conduct and Guidance

7. In the first instance, Councils should ensure that all councillors have their own copies of the Councillors' Code of Conduct and this Guidance Note. Attention should be drawn to the additional material which the Standards Commission will issue from time to time, including that published on its website.

Application of the Code

8. The Act and the Code apply only to elected councillors and not to co-opted members of local authority committees. Co-opted members are, however, expected to apply the same high standards of conduct as elected councillors.

9. Local authorities should, therefore, expect co-opted members to comply with the Code and this should be a condition of appointment. In cases where the authority has no discretion over the appointment (such as the Church of Scotland and Roman Catholic Church representatives on education committees) the authority should seek confirmation from the appointing authorities that they will require their appointees to comply with the Code.

European Convention on Human Rights

9. The Code itself – including its key principles – is compliant with and subject to the provisions of the European Convention on Human Rights (ECHR) as applied by the Human Rights Act 1998.

Training

10. Councils should make arrangements to hold or attend training and induction sessions on ethical standards and they should strongly encourage all of their councillors and senior officers to attend such sessions. The Standards Commission is willing to participate in any such programmes wherever practical, particularly where organised by established training providers, such as representative, professional or training associations.

11. The training sessions should cover the ethical framework, including the Act, the Code of Conduct and the enforcement regime, and emphasise the personal responsibilities of councillors. Training sessions should be offered to councillors as soon as possible after any revisions are made to the Councillors' Code of Conduct.

12. When Councils are re-constituted after local government elections arrangements should be made to hold training sessions for all councillors.

13. Since ethical standards is a developing and evolving area, Councils should also make suitable arrangements for periodic refresher courses for councillors.

Advice from Senior Officers

14. As part of the support provided to them, it is important that councillors should have ready access to advice from nominated senior officers (such as the chief executive or the monitoring officer) on the ethical framework in general, and on the Code of

Conduct in particular. When seeking advice, councillors should do so in good time and ensure they apprise the officers of all relevant facts and circumstances.

15. Officers should always clearly point out that it is the councillor's personal responsibility to ensure that they comply at all times with the provisions of the Code of Conduct. This will be particularly important when giving advice in relation to matters such as registration of interests and declaration of interests.

Respect for other councillors and employees

16. The Standards Commission recommends Councils draw up best practice guidelines or protocols to cover working arrangements among members and, where appropriate, among party groups and between members and officers to facilitate achieving this important objective.

Conduct at Meetings

17. The Chair's powers and duties should be articulated to the whole Council in standing orders which should set out the obligation on the Chair to permit fair and responsible debate and the obligation on the other members to adhere to appropriate rulings by the Chair. Behaviour disruptive to the meeting should not be tolerated. Appropriate sanctions should be available to deal with members guilty of such behaviour, including exclusion from the meeting if necessary to allow Council business to be completed.

18. The Standards Commission recommends that every local authority has a set of standing orders in place which should include provisions to regulate procedure at meetings.

19. Where disruptive behaviour – individual or otherwise – reaches the stage of preventing Council business from properly and timeously taking place, it is recommended that such issues, wherever possible, be referred in the first instance to an informal meeting of senior elected members (such as political group leaders), together with appropriate senior officers in order to seek a resolution to such issues. Reference of a breach of the Code should be made to the Commissioner for Ethical Standards in Public Life in Scotland where it is believed that such a reference to a group of senior elected members would serve no useful purpose or would otherwise be inappropriate. It should be recognised that disruptive behaviour will reflect on the reputation of the Council as well as that of individual elected members.

20. The conduct of the Chair in the process of conducting a meeting can play a major role in ensuring a successful meeting. For that reason, councillors who are regularly expected to chair meetings should ensure that they are familiar with the Council's standing orders relating to the conduct of debate.

Confidentiality Requirements

21. Council or committee reports issued to elected members will clearly indicate if they are deemed to contain confidential or exempt information. Councillors will also receive other information from Council officers which may be confidential or private; in such cases it is important that in imparting such information to councillors it is made entirely clear that the information is made available to them in confidence and the extent – if at all – that they may pass on such information to third parties (such as constituents, colleague councillors or the press) should also be made explicitly clear.

Use of Council Facilities

22. Councils should ensure that arrangements made to assist councillors communicating with their constituents or the wider public do not include campaigning activities. Where councillors wish to circulate communications to their constituents or the public, there should be suitable safeguards in place to ensure that any expenditure incurred by the local authority is appropriate. The Standards Commission recommends that Councils have a policy in place dealing with councillors' use of IT Equipment.

Registration of Interests

23. All Councils have a duty to set up, maintain and make available for public inspection a register of the interests of their councillors which the Code requires to be registered. They must also appoint a proper officer to maintain the register.

24. Councils should ensure that councillors are aware of the importance of registering all their relevant interests. They should make arrangements for councillors who wish to do so to consult the nominated senior officers(s) to help them to complete their own notices for the Register of Interests in accordance with the requirements of the Code and the Regulations.

25. The principal Register should be kept at the head offices of Councils and an electronic version should be available on the Council's website. The information should also be available at other main Council offices and public libraries. Any member of the public inspecting such information at any of these locations should be entitled to receive a printed copy of the information on request. The Standards Commission will provide a facility on its own website so that members of the public, on accessing that site, can link to the relevant pages on the Councils' websites. The electronic version of the Register need not include personal address information that would compromise councillors' personal security, the full details being available for public inspection as above. Advice in relation to personal security and the Register can be obtained from the monitoring officers and from the Standards Commission.

26. The Standards Commission appreciates that there may be a time gap between the registering of interests in the principal Register and copying that information to websites. This means is it important to make it clear the date at which the information given is accurate. Councils should aim to have their websites updated within one month of the receipt of the information.

27. Appropriate arrangements should be made to ensure that councillors are advised to keep their entries in the Register under review. These arrangements should include the issue of a reminder at least every six months.

28. It is each councillor's personal responsibility to ensure that his/her Register of Interests is updated timeously i.e. within one month of a change of circumstances.

29. The proper officer must maintain a record of the interests registered by the councillors in their first notice and any subsequent notices. The proper officer must ensure that all the appropriate information – that is the date of the notice, the name of the councillor and the statement of information in the notice – is fully recorded.

30. The proper officer must maintain the record for five years after the member ceases to be a councillor.

THE ACTIVITIES OF SUSPENDED COUNCILLORS

Suspension

31. In all cases of suspension, whether partial or full, the councillor's entitlement to attend meetings will be limited or removed altogether. Attendance at, and participation in, meetings is one of the most important responsibilities of public office. The Standards Commission recognises that constituents may perceive that a limitation in entitlement to attend meetings will adversely affect the councillor's ability to represent their interests fully. Accordingly, Councils should make appropriate arrangements to provide representative cover for the suspended member for the benefit of his or her constituents.

32. Councils should also consider carefully whether it would be appropriate for the councillor to continue to be consulted on various issues as the local member. Particular thought should be given to regulatory or quasi-judicial matters where the councillor has been suspended from the committee appointed to deal with such matters.

Partial Suspension

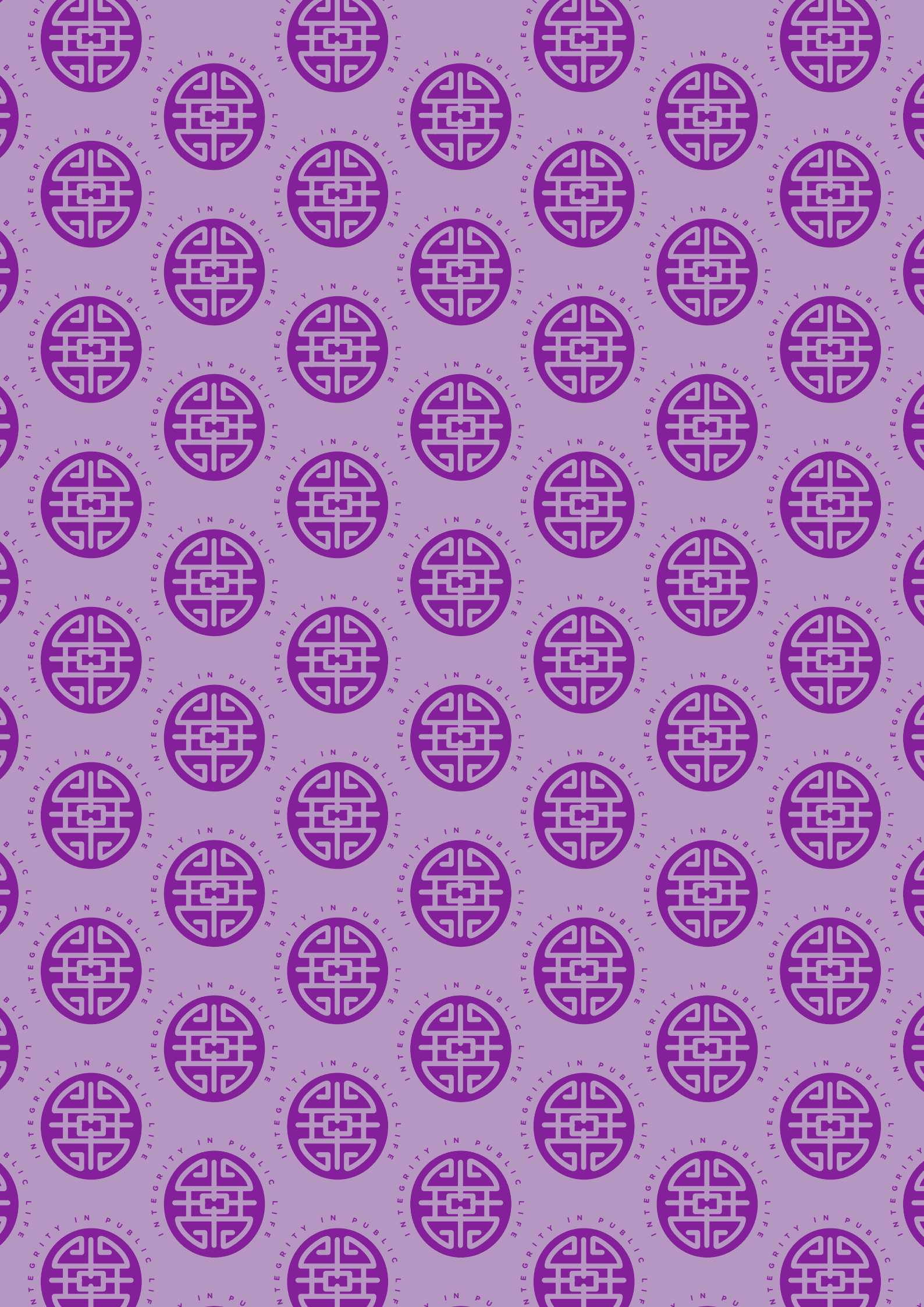
33. Where the councillor has special responsibilities (such as being a Spokesperson in respect of particular matters or Chair or Vice-Chair of a particular Committee or Sub-Committee or Joint Board), and the councillor has been suspended from Council meetings or meetings of the Committee or Sub-Committee or Joint Board dealing with that function, the councillor must not undertake these special responsibilities during the period of suspension. Moreover, the Council should, during the period of suspension, cease payment of remuneration at the grade of Senior Councillor (or equivalent enhanced payment for a joint board) and remunerate the councillor at the rate of remuneration payable to ordinary councillors.

34. Where a councillor has been suspended from attending meetings of another body on which the councillor is a representative or nominee of the Council, the Council should consider nominating another councillor as the Council's representative or nominee on that body.

Full Suspension

35. In a case of full suspension or where the councillor is suspended from all meetings of the Council and all meetings of its committees and sub-committees, the councillor should not undertake any special responsibilities previously assigned to him/her by the Council and the Council should, during the period of suspension, cease payment of remuneration at the grades of Leader of the Council, Civic Head or Senior Councillor (or equivalent enhanced payment for a joint board) as applicable and remunerate the councillor at the rate of remuneration payable to ordinary councillors.

36. Depending on the length of the period of suspension, the Council should also consider appointing other councillors to the vacancies on committees or sub-committees and to any other body where the councillor has been the Council's representative or nominee consequent on the suspension of the councillor.


INTEGRITY IN PUBLIC LIFE

STANDARDS COMMISSION FOR SCOTLAND

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