

ANGUS COUNCIL – 16 MAY 2017

THE ETHICAL STANDARDS IN PUBLIC LIFE ETC (SCOTLAND) ACT  
2000 THE COUNCILLORS' CODE OF CONDUCT

REPORT BY SHEONA C HUNTER, HEAD OF LEGAL AND DEMOCRATIC SERVICES

**ABSTRACT**

This report advises Council members of their responsibilities as Councillors under the Councillors' Code of Conduct and associated statutory guidance issued by the Standards Commission.

**1. RECOMMENDATIONS**

The Council is recommended:-

- (i) to note the legislative framework on the behaviour and conduct required of Councillors which is aimed at promoting the highest standards in public life; and
- (ii) to note the specific requirements in relation to registration and declaration of interests.

**2. BACKGROUND**

The Ethical Standards in Public Life etc (Scotland) Act 2000 introduced a new code of conduct for local authority Councillors and members of relevant public bodies and established a Standards Commission for Scotland to oversee the new framework and deal with alleged breaches of the code. A revised Councillor's Code of Conduct came into effect in December 2010 with Guidance being incorporated in November 2011. The Guidance is directed to Councils and Councillors, but it is also directed to co-opted members of committees and sub-committees who are not elected members.

**3. IMPLICATIONS OF THE CODE**

Members are asked to take time to read the Code and the associated Guidance. Members are particularly asked to note that the Code applies to every member of a local authority in Scotland. **As a councillor, it is an individual member's own responsibility to make sure that he/she is familiar with the Code, and that his/her actions comply with its provisions.**

**Guidance**

Members' attention is drawn to Section 1.5 of the Code which states that "it is your personal responsibility to comply with these (the law, the Code, the Guidance, Standing Orders and Financial Regulations of the Council) and review regularly, at least annually, your personal circumstances." With this in mind, you will receive a systematic reminder from the Head of Legal and Democratic Services prompting you to consider whether you require to update your previously registered interests. However, notwithstanding any reminder issued to members, members must advise the Head of Legal and Democratic Services immediately (and at least within 1 month) of any changes in your personal circumstances.

Section 1.6 indicates that "no written information can provide for all circumstances and if members are uncertain about how the rules apply, they should seek advice from senior Council employees." The Chief Executive, the Head of Corporate Improvement and Finance and the Head of Legal and Democratic Services will assist any member, whenever possible.

**Registration of Interests**

Section 4 of the Code deals with the interests which members must register. They must register their interests with the Head of Legal and Democratic Services as Proper Officer

within one month of signing of the Declaration of Acceptance of Office. Regulations made by Scottish Ministers describe the detail and timescale for registering interests.

Enclosed with the Induction Pack that members received was a blank First Notice of Registrable Interests which should have been completed and returned to the Head of Legal and Democratic Services. Details of these interests will be published in libraries, on the Council's website and will be available for inspection (with printed copies on request) in the Council's headquarters within one month of the date of the election.

### **Declaration of Interests**

In addition to registering their interests following election, members are required to declare interests at meetings which they attend. This is covered by Section 5 of the Code.

Section 5.2 of the Code makes it clear that **“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 discussion or voting.”**

Interests which require to be declared may be financial or non-financial and they may or may not cover interests which are registrable in terms of the Code. Most of the interests to be declared will be members' personal interests, but, on occasion, they will have to consider whether the interests of other persons require them to make a declaration. The Code sets out three categories of interests namely:

- members' own financial interests
- members' non-financial interests
- the interests, financial and non-financial of other persons.

All **financial interests** which members have registered **must** be declared. In addition, members may have to declare a financial interest which they have not registered. Where a member has declared a financial interest he/she must take no part in consideration of the item to which the interest relates and must remove themselves from the chamber.

**Non-financial** interests are declarable if they are **significant**. The presumption in the Code is that non-financial interests will be the subject of declaration, unless members believe that, in the particular circumstances, the nature of the interest is irrelevant or without significance. Members must decide whether their interest is so significant that they should vacate the chamber whilst the matter is being considered.

With regard to the **interests of other persons**, the Code does not require members to register the financial interests of their spouse or partner. However, interests “known to you” should be declared if a member of the public, acting reasonably, would regard these interests as effectively the same as the member's interests in the sense of potential effect on his/her responsibilities as a councillor. The same applies to relatives and friends. For example, if a member's friend has applied for planning permission, that member should declare an interest and not take part in any meeting which may be determining the application.

The Council has agreed that declarations of interest should be a standard item on the agenda of all public meetings of the Council. Accordingly, at the start of the relevant meeting members should make an oral statement identifying the item or items of business to which their interest relates. The statement must be sufficiently informative to enable those at the meeting to understand the nature of their interest, but need not give a detailed description of the interest. With non-financial interests, members must also decide whether or not to take part in any discussion or voting on the matter. The test is whether, in the particular circumstances, and knowing all the relevant facts, a member of the public acting reasonably would consider that the member might be influenced by the interest in their role as a Councillor and that it would therefore be wrong to take part in any discussion or decision making.

Attention is also drawn to Section 5.15 of the Code about frequent declarations of interest and members should consider whether or not it would be appropriate for them to be a member of a particular committee if they would have to declare an interest on a regular basis.

### **Dispensations**

The Standards Commission has granted a number of dispensations which permit members to remain and contribute to items being considered but still require a declaration of interest. The code refers to General and Specific Exclusions and these are included in Section 5.18 of the Guidance.

Members will note that individual councillors can apply for a dispensation to allow them to take part in the discussion of, and voting on, a matter where in terms of the Code, they might otherwise be prohibited from taking part.

### **Taking Decisions on Quasi- Judicial or Regulatory Applications**

Section 7 of the Guidance will be of particular relevance to those councillors who are appointed to the Civic Licensing and Development Standards Committees. However, as the determination of major planning applications is undertaken by all members sitting as Angus Council, members are strongly urged to familiarise themselves with the contents of this Section.

## **4. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

## **5 CONCLUSION**

The importance of the Code, and its associated Guidance and Dispensation Note, cannot be over emphasised. Training has been arranged on 8 May 2017 which will allow discussion on the detail of the statutory requirements. However, if any member wishes clarification on any aspect of the legislation, then we or our senior staff would be pleased to assist.

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above Report are:

- The Councillors' Code of Conduct issued in December 2010; and
- The Ethical Standards in Public Life Etc (Scotland) Act 2000 (Register of Interests) Regulations 2003.

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