

ANGUS COUNCIL – 26 MAY 2022

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

REPORT BY JACKIE BUCHANAN, DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

This report advises Council members of their responsibilities as Councillors under the Councillors' Code of Conduct, (the Code).

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. The Standards Commission is the regulatory body responsible for the Code. They raise awareness and understanding of the Code by issuing Guidance, Advice Notes & Standards Updates, through training events, and by answering queries and providing advice to councillors, council employees and members of the public.

Their overall aim is to prevent breaches of the Code from occurring. The Standards Commission also has an enforcement role through its work on adjudicating on complaints and in imposing sanctions when a breach is found. Any allegations of a breach of the Code of Conduct are investigated in the first instance by the Commissioner for Ethical Standards. A revised Councillor's Code of Conduct came into effect in December 2021 with Guidance on how to interpret the provisions within the Code. The Code 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 along with the Guidance.

Members are particularly asked to note that the Code applies to every member of a local authority in Scotland. Members' attention is drawn to Section 1.8 of the Code which states that "I understand that it is my personal responsibility to be familiar with the provisions of the Code and that I must also comply with the law and my council's rules, standing orders and regulations."

Section 1.10 of the Code indicates that "I understand that no written information, whether in the code itself or the associated Guidance or Advice Notes issued by the Standards Commission, can provide for all circumstances. If I am uncertain about how the Code applies, I will seek advice from my council's Monitoring Officer."

Registration of Interests

Section 4 of the Code deals with the interests which members must register. They must register their interests with the Director 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. The Register should cover the period from twelve months before a member is elected and then the subsequent whole term of office. So for this term starting in May 2022, the Register should cover the period commencing May 2021. Should an interest no longer apply then the entry should still be listed but amended to reflect the change in circumstances.

Members have been provided with electronic copies of all the Register of Interest forms to be completed and returned to the Manager - Democratic and Members. Details of these interests will be on the Council's website within one month of the date of the election. Any questions on registering an interest should be directed to Donald Macaskill, Manager-Democratic and Members Services.

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 and is a fundamental part of the Code. Please note that you must disclose or declare your interests both in formal and informal dealings with Council employees and other councillors, not just in formal Council or committee meetings. You cannot assume that employees or others will know or will remember what your interests are and the responsibility sits with you to make a declaration of interest, whenever that is appropriate.

With reference to your attendance at any meetings, Section 5.6 of the Code makes it clear that **"I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest."**

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. An interest is based on a connection to the matter. A connection is any link between the matter and you or a person or body you are associated with. This could be a family relationship or a social or professional contact. The Code details matters which would not be considered a connection, for example being a Council Tax payer.

The Council has agreed that declarations of interest should be a standard item on the agenda of all Council and Committee meetings of the Council. Accordingly, at the start of the relevant meeting where members have an interest to declare, they should make an oral statement identifying the item or items of business to which their interest relates. In addition, members are required to complete a Declaration of Interest Form. A copy of this form has been emailed to all elected members. Copies are also available from Members Services and Democratic Services. The oral 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. This applies to financial and non-financial interests. The test in each case is known as the objective test. That is where a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

Dispensations

Members will note in terms of section 5.8 of the Code that an individual councillor 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. Such application must be made in advance of any meetings where the dispensation is sought and until and unless the application is granted, a member cannot take part in any discussion or decision-making on the matter in question.

Taking Decisions on Quasi- Judicial or Regulatory Applications

Members require to be especially vigilant about taking decisions in quasi-judicial and regulatory applications. This is covered in Section 7 of the Code and covers such things as planning and licensing matters as well as community asset transfers. The key thing to note here is that there needs to be a proper and fair hearing and you must avoid any impression of bias in the whole decision-making process. The Code sets out clear dos and don'ts when

dealing with such applications. This will be of particular relevance to those councillors who are appointed to the Civic Licensing and Development Standards Committees. However, it can affect other matters too. It is worth noting that currently the determination of major planning applications is undertaken by all members sitting as Angus Council. Consequently, all members are strongly urged to familiarise themselves with the contents of this Section of the Code.

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 already taken place explaining the detail of the requirements of the Code for members. However, if any member wishes clarification on any aspect of this, please contact the Monitoring Officer, Jackie Buchanan or the Deputy Monitoring Officer Alison Watson.

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 2021; and
- The Ethical Standards in Public Life Etc (Scotland) Act 2000 (Register of Interests) Regulations 2003.

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