



THE NHDC CODE OF CONDUCT

Detailed Guide: what the Code means for Members



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FOREWORD BY THE CHAIRMAN OF THE NHDC STANDARDS COMMITTEE



I became the Chairman of the Standards Committee in July 2012 and this appointment was at a time of great change for the Standards regime. Full Council adopted their own local Code of Conduct on 18 July 2013 and sent out a strong message to all Members that standards matter.

Throughout my time as Chairman I have seen the Committee's role change and adapt to the more localised approach. One of the key functions of the Committee is the promotion of high standards, prevention of infringements of the Code and to try to ensure appropriate advice is available. This Guide will help with this process and the responsibility that Members have to observe the Code.

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

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

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

Councillor Mike Rice



Introduction

This guide provides a general interpretation the Code of Conduct ('the Code') adopted by NHDC on 18 July 2013. Whilst this guide is not an exhaustive list of thing to do/ not to do, it's general aim is to: (1) provide a guide for members as they carry out their roles; and (2) provide a source of reference when considering any alleged breaches and will be taken into account during any related assessment, investigation and determination (including those relating to Parish Councillors).

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

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

Some of the areas in relation to interpretation of Disclosable Pecuniary Interests ('DPI'), for example, may still be a matter of legal challenge and interpretation as/when/if any cases are taken and decided in Court. This Guide will, however, be reviewed and updated as necessary to reflect any further developments.

The full NHDC Code of Conduct is in section 17 of the Constitution on the Council's webpage and is appended to this Guide. NHDC Councillors should check this or seek advice if unsure about what is required.

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

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

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

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

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

The Code applies to all NHDC District Members and co-opted Members. It applies to all meetings of the Council, **including informal meetings** with Officers and other Members, when

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

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



conducting Council business, acting, claiming *or giving the impression that of acting* as an NHDC Member. **This means that a Member cannot pick and choose when it applies.**

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

Be aware that the Code may be applied if a Member is found guilty of committing a criminal offence during his/her term as a Member (*as it could be conduct that brings the Member, the office or NHDC into disrepute*).

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

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

For instance, if a Member is a Trustee or Director of an external body, then there are a number of legal duties to that Trust / Company and there is a duty to act in the best interests of that body. That responsibility is likely to or may conflict with the duty that a Member has to residents of the District as a whole and the Council's objectives. Such a conflict is likely to affect the ability to participate or deal with any Council business linked to that Trust or Company a Member sits on. Advice should be sought from the Monitoring Officer before taking on this dual role and in any event note the potential conflict and act appropriately under the Code when dealing with Council business. (See paragraph 4 below and **Guidance to Councillors on Outside Bodies**³)

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

The simple answer is yes.

3: Rules of Conduct

3.1: The seven principles of public life:

Under section 28 of the Localism Act 2011 (the 'Act'), relevant local authorities (which include District and Town/Parish Councils) must adopt a Code, which is consistent with these seven principles. These are the principles of public life published in May 1995 and the most recent wording from November 2015 (in italics) is set out in **paragraph 3.1 of the Code**:

- **Selflessness:** *“Holders of public office should act solely in terms of the public interest.”*
- **Integrity:** *“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They*

³ <http://intranet.north-herts.gov.uk/home/directorates-and-members/support-members>



should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.”

- **Objectivity:** *“Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.”*
- **Accountability:** *“Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.”*
- **Openness:** *“Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.”*
- **Honesty:** *“Holders of public office should be truthful.”*
- **Leadership:** *“Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.”*

These principles underpin the Code. They help secure or preserve public confidence in local government and its decision making/ actions. The Monitoring Officer, or nominated investigator and the Standards Committee will have regard to these principles when deciding whether there appears to be a case to answer or whether a breach of the Code has taken place.

Note as an important aside, that a Member has the benefit of Council insurance/indemnity for any neglect, act, error or omission occasioned by an Officer or Member **if they act in good faith** whilst carrying out their duties on Council business. If they are found to have committed a criminal offence then any costs paid by the Council would have to be repaid. Following the Code will therefore keep a Member within the bounds of “acting in good faith”.

3.2 Duties and Responsibilities:

(a): Equality

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

Grounds of discrimination⁴:

It is unlawful to discriminate against anyone because of:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief

⁴ See: Equality & Human Rights commission: <https://www.equalityhumanrights.com/en/equality-act/equality-act-fags>



- Sex
- Sexual orientation

These are called '**protected characteristics.**' They are enshrined in legislation.⁵ People are protected against such discrimination at, for example, work or when using public services. The potential discrimination situations are when Members deal with NHDC employee or the public / public's use of the Council's services.

Types of discrimination:

Discrimination comes in one or more of these four forms:

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

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

Equality laws also impose positive duties on public bodies to eliminate unlawful discrimination and harassment and to promote equality. They also impose specific positive duties on certain authorities. Furthermore, under equality laws NHDC may be liable for any discriminatory acts that a Member has committed when they act in their official capacity. A Member must therefore be careful not to act in a way that may amount to any of the prohibited forms of discrimination, or to do anything that hinders NHDC's fulfilment of its obligations under equality laws. Such conduct may cause the authority to break the law, result in the Council having to pay substantial compensation and a Member may become the subject of a complaint that the Code has been breached.

⁵ The Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/contents>

3.2(b): Show respect and consideration

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

Respect for / or from other Members:

In politics it is recognised that there will be political rivalries and either formal political party or informal alliances even within those groups. Each political group will campaign for their ideas, and, as part of democratic debate, they may also seek to discredit the policies and actions of their opponents. Discussions may become heated. This is part of the rough and tumble of political life and does not in itself (when directed at other Members) amount to failing to treat someone with respect (or indeed bullying – see 3.2(c) below). Freedom of expression is a right currently protected under Section 12 of the Human Rights Act 1998⁶. It is a right that may be restricted *in certain circumstances*, for example, for the protection of the rights and interests of others. Case law⁷ has supported the contention that a Member’s freedom of expression attracts *enhanced protection* when the comments are of political, public administration and public concern, including when the comments relate to the manner of performance of public duties. This means that if a Member criticises another Member publicly about their actions or performance then this is *unlikely* to be seen as disrespectful as they are expected to have “thicker skins”. [Note comments below relating to officers].

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

Where complaints have been made from within a particular political group towards another Member *of that same group*, then the Monitoring Officer would look to (and expect) the Leader or that group to deal with this in the first instance, within party rules or processes. Equally, inter-group complaints should ideally be dealt with between respective leaders of those groups. This does not mean that the Council would not consider such complaints, but that internal procedures should be the quickest, and in most cases, the most appropriate approach to take.

Respect for/or from the public and NHDC employees:

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

Where employees are concerned, the position could be said to be between that of a member of the public and another Member (dependent on the employee’s position). Ideas and policies may be robustly criticised by other Members or the public, but Members should not subject individual employees to personal attacks. It is acknowledged that Members are elected to represent the public and they may be unhappy with the way that a report/ or action has been

⁶ Which transposed the European Convention on Human Rights – Article 10 being Freedom of Expression

⁷ Heesom v Public Services Ombudsman for Wales Queen’s Bench Division (Administrative Court) 15 May 2014

undertaken by an employee. As indicated above, Members do have a degree of enhanced protection for certain comments made publically, as the Judge in the case of Heesom⁸ found:

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

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

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

3.2(c): Do not bully or harass

This paragraph states that Members must: **“not use bullying behaviour or harass any person”**.

The Public Services Ombudsman for Wales’ Guidance (‘PSOW’)⁹ refers to a similar provision and describes bullying in identical terms to the old Standards Board for England Guidance on Bullying and Harassment as:

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

“Harassment is repeated behaviour which upsets or annoys people.”

As the ACAS advice indicates:

⁸ *Ibid* – para 42.

⁹ The Code of Conduct for members of local authorities in Wales Guidance from the Public Services Ombudsman for Wales for members reissued March 2015

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

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

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

When considering allegations of bullying and/or harassment the relevant Officers and (if applicable) the Standards Committee will consider the perspective of the alleged victim, their seniority, the forum and whether an objective person would have considered the actions to be bullying or harassing. As the PSOW indicates in their Guidance¹⁰:

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

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

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

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

As a reiteration of an earlier point, rather than go down the route of public criticism of officers, it is important that a Member raises issues about performance with a line manager in accordance to approved processes (to a line manager rather than directly attack staff in public meetings or via social media). The PSOW Guidance usefully states:

“Local Authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of

¹⁰ Ibid.



a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means.. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.”

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

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

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

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

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

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

Members can robustly question staff (as stated above) in order to understand their reasons for proposing to act in a particular way, or the content of a report that they have written. In doing so a Member must not try to force an employee to act differently, change their advice, or alter the content of that report. If they do so it could be seen to be a breach of this paragraph of the Code.

3.3: Information

3.3(a): Do not disclose confidential information

This paragraph states that a Member must not:

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

What is confidential information – paragraph 3.3(a):

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

Information is confidential if:

- the nature of the information is sensitive or personal;
- it is information that people would want to be private;
- it was divulged in a way which implied it should be kept confidential;
- disclosing the information would be detrimental to the person/ body who wishes to keep it confidential (for example it is a business secret);
- if the Council or Committee has voted to treat the information as exempt, or the documents have been marked confidential/or sent with an email marked as such, then a Member should treat it as confidential. This will be because of a specific legal exemption.¹¹

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

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

Note that (a)-(c) above are fairly self-explanatory and reasonably easy to determine or prove. However, (d) requires further explanation:

- *The disclosure is reasonable*: this is a matter of judgement; however, when considering whether to make a disclosure (or indeed whether there has been a breach of the Code) the following issues should be considered:
 - Whether it is true/they have reasonable grounds for believing it to be true. If a Member does not have reasonable grounds for believing it is true, then the disclosure is unlikely to be reasonable.
 - The reason for the disclosure: if there is any personal gain for the Member from the disclosure (financial or position/role), then it is unlikely to be reasonable.

¹¹ For example under the Local Government Act 1972 such as information relating to an individual or indent which would be covered by Data Protection; financial or business affairs; negotiations; legal professional privilege; prevention, investigation or prosecution of crime.



- The identity of the person/body that the disclosure has been made to will also be important. It may be reasonable to disclose to a legal adviser/ or a regulatory body or person (such as the Auditors or the Police), but not to the world at large through the media.
- The extent of information disclosed: the inclusion of unnecessary detail is unlikely to be reasonable. Even where disclosure is reasonable in the circumstances, if the extent of the material disclosed is disproportionate to the purposes of the disclosure, excessive disclosure could amount to a breach.
- The seriousness of the potential harm: the more likely it is that the disclosure will be reasonable. Note, however, that Members are encouraged to use the Council's **Whistleblowing Policy** procedures to report any concerns in the first instance.
- The timing of the disclosure: if the matter to which the disclosure relates to has already occurred, and is unlikely to reoccur, then the disclosure is less likely to be reasonable than if the matter is continuing or is likely to occur again.
- Whether the disclosure involves your authority failing in a duty of confidence to another person – if so it is more likely to be unreasonable.
- *The disclosure must be in the public interest and in good faith:* information is in the public interest if the public interest in disclosure **would outweigh** the public interest in keeping the information confidential AND if:
 - There are reasonable grounds for believing that a criminal offence has been committed.
 - The authority has/or is about to fail to comply with its legal obligations.
 - There are reasonable grounds for believing that a miscarriage of justice has or is likely to occur.
 - A person's health and safety is in danger.
 - The environment is likely to be damaged. And/or
 - Information about any of the issues above is deliberately concealed.

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

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

- *The disclosure would not be in contravention of NHDC's reasonable requirements:* Before considering releasing confidential information a Member must ensure that s/he complies with NHDC's policies and protocols on matters such as the '**Whistleblowing Policy**' or '**Protocol for Member/Officer Working Arrangements**' in addition to



considering requirements in the bullet points above. The Member should raise concerns regarding Council activities under the Whistleblowing Policy with the Council's Monitoring Officer rather than disclose confidential information. The concern will be assessed/investigated under the Whistleblowing Policy. This enables the Council to consider a situation quickly – and if serious the Monitoring Officer is likely to refer this to the NHDC auditors or the Police.

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

Members are also referred to Section 15 of the Constitution which deals with the “**Access to Information Rules**”.

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

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

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

As a general rule a Member should assume that documents (including emails) produced as part of their role may be disclosed. If the Council receives an information request (from any party) this will be reviewed and a Member be asked for this information. If a Member refuses this may be a breach of the Code. The relevant officer considering the request will consider if any exemption or exception to disclosure applies, but will be bound to follow the legal requirements. It is worth noting that destroying requested information outside of a public authority's normal policies is unlawful and may be a criminal offence if done to prevent disclosure¹². Therefore, failure to comply with a request for such information is likely to be considered a breach of this paragraph of the Code.

3.4: Conduct

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

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

¹² Section 77 FOIA 2000 potential offence if someone alters, defaces, blocks, erases, destroys or conceals any record held by the public authority with the intension of preventing disclosure.



A Member's actions are subject to greater scrutiny than those of the public. Members should be aware that the actions they undertake in their public and private life might have an adverse impact on their office or NHDC. Dishonest and deceitful behaviour of a Member may bring the authority into disrepute, as may conduct in a Member's private life which results in a criminal conviction, such as dishonest, threatening or violent behaviour.

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

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

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

There is no specific English case law on such wording in Code of Conduct complaints. However, there is a similar paragraph in the Welsh Code of Conduct¹³ and PSOW¹⁴ has provided a useful indication of what this means:

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

The PSOW Guidance also states:

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

Well-founded allegations against staff or other Members should be dealt with under the normal channels – with applicable complaints made to the line manager or internally to a group Leader or the Monitoring Officer. Equally, Members should not repeatedly or publicly make complaints against staff or other Members because it has not been upheld.

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

¹³ Paragraph 6(1)(d).

¹⁴ Guidance from the Public Services Ombudsman for Wales re-issued March 2015

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

This paragraph states that a Member must: ***“comply with any request of the authority's monitoring officer or section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.”***

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

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

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

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

3.5: Use of your Position

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

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

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

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

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

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

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

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

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

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

Political purposes? – 3.5(b)(v)

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

There are, however, particular issues with publicity and the use of resources around election time (commonly referred to nationally as ‘purdah’). The Member should therefore consider this and have regard to **The Code of recommended practice on Local Authority Code of Publicity**, which supplements the prohibition¹⁵ on the use of local authority publicity to promote or affect support for a political party. The Council is not allowed to give financial or other support or assistance for publicity¹⁶ to an individual or party. Therefore if a Member is found to have used Council resources in this way or put pressure on NHDC employees/contractors to do so then this is likely to be a breach of this paragraph of the Code and Council Policies.

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

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

There may be circumstances where NHDC authorises a small degree of use for private purposes, for example, the use of a council-issued mobile phone to make personal calls, or computer for emails. A Member must, however, be aware of the restrictions placed on use

¹⁵ In section 2 Local Government Act 1986. The Code March 2011 made under the Local Government Act 1986.

¹⁶ “Publicity” means any communication, in whatever form, addressed to the public at large or to a section of the public.

including any requirement to reimburse NHDC for the costs incurred (for personal calls on a mobile, for example).

3.6: Decision making

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

This paragraph states that a Member must:

“(a) when participating in meetings or reaching decisions regarding the business of the authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the authority's officers, in particular by—(i) the authority's head of paid service; (ii) the authority's s.151 officer/ chief finance officer;(iii) the authority's monitoring officer/ chief legal officer;

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

‘Merits’ – in paragraph 3.6(a):

This means consider all the arguments and points made before reaching a decision.

What does “having regard to any relevant advice” means – in paragraph 3.6(a):

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

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

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

And that Members are expected to follow this advice unless there are:

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

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

“Giving reasons” – paragraph 3.6(b):

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

“As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing



so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.”

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

3.7:(a) observe the law and rules on claiming of expenses and allowances; (b) comply with the NHDC Members Protocol for Gifts and Hospitality; (c) comply with other NHDC policies setting out conduct from Members

These should not require too much explanation.

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

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

This does not prevent a Member from attending official events such as a civic reception or general consents set out in the Protocol: [NHDC Members’ Protocol for Gifts and Hospitality](#). This can be found on the internet on the following page:

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

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

4: Interests

4.1: Interests

Paragraph 4.1- 4.5 deals with a class of interest which is statutory under the Localism Act 2011- Disclosable Pecuniary Interests (DPIs) and 4.6 – sets out an additional NHDC class of interest that has been included and approved by Members – ‘Declarable Interests’.

4.2 – 4.5: Disclosable Pecuniary interests ('DPIs')

What are they?:

Whilst there is no model format for a Member Code in England, there is a legal requirement under the Localism Act for a relevant authority to adopt a Code that includes DPIs and for Members to take certain actions when they have a DPI.

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

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

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

It is a Member's DPI *if it is his or her or their spouse or civil partners'* (or a person with whom the Member is living with as a spouse or civil partner) interest. All are termed "relevant person" under the Regulations 2012. This provision is especially relevant under the 'contracts' and 'land' provisions of the regulations, (See below.)

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

In terms of DPIs and their effects on a Member's participation in a meeting, section 31 of the Act indicates that if a Member has a DPI *"in any matter to be considered or being considered"* then they cannot participate. The requirement is set out under paragraphs 6.1, 7.2 and 7.2. of the Code. The DCLG Guidance does not elaborate on such matters in detail.

There have been some recent court cases in the civil and criminal courts. However, these have again demonstrated different conclusions.

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



sought advice from the Monitoring Officer or a dispensation. In the absence of that the Defendant Member should not have take part in that meeting. A conditional discharge and costs were imposed.

In an almost mirrored civil planning case, *Kelton v Wiltshire Council*¹⁷, the decision to grant permission was challenged (amongst other things) because one of the Members on the planning committee was a Director of a not for profit affordable housing company who supported and had an interest in the affordable part of the potential development. The claim that the Member’s Directorship amounted to a DPI was not upheld as there was no direct pecuniary or proprietary interest in the planning application. On the facts of that case, however, there was a real possibility of bias and the Member should not have participated in the meeting or the decision making.

What u can be gleaned from the civil *Kelton* case, as well as an earlier decision in *Freud*¹⁸ is that the DPI must be the subject of the Council business (so the DPI that is the subject of Council business e.g. the Member’s employment, land, contract with the Council) and if so, the interest must be declared and the Member will be prevented from participating in the meeting and must leave under the legislation, the Code and NHDC’s Standing Orders. Unhelpfully this is the opposite the *Flowers* criminal case. The best advice that can be provided at this stage is therefore to seek advice and potentially a dispensation (see section 8 below), and err on the side of caution.

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

Disclosable Pecuniary Interest description	What does this mean?
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
	<i>Note that this goes beyond work within a Member’s authority area. However, it will only be an issue at the Council meeting if this item is about the relevant person’s employment and/or business. It is not anticipated that a Member would have a DPI that extended to any general profession or trade or vocation discussions.</i>
Sponsorship (Other payments received)	Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the Monitoring Officer about your Disclosable Pecuniary Interests following your election or re-election, or when you became aware you had a Disclosable Pecuniary Interest relating to a matter on which you were acting alone.

¹⁷ *Kelton v Wiltshire Council* [2015] EWHC 2853

¹⁸ *R. (on the application of Freud) v Oxford City Council* [2013] EWHC 4613 (Admin)



	<i>Note this includes monies paid by the Member's party in support of the Member's election. Members do not have to include the allowances or expenses that they receive from NHDC. In this case, the DPI will be identity of the person or organisation that has given the Member the payment.</i>
Contracts	Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority – <ul style="list-style-type: none"> - under which goods or services are to be provided or works are to be executed; and - which has not been fully discharged.
	<i>Note, this means any on-going goods and services contracts that a relevant person (or their firm – if they are a business partner or have other beneficial interests in the business) has with NHDC.</i>
Land	Any beneficial interest in land, which is within the area of the relevant authority.
	<i>Note this includes residential or commercial property (usually also where a Member/ spouse or partner lives, as a Member will have some sort of tenancy, or ownership or right to occupy). It does not include easements – i.e. access to land, or rights that would not ultimately allow the relevant person the right to occupy or receive income. When identifying the land, the full address for residential or commercial premises should be provided and for other land, a road or map identification or TR/OS Grid reference¹⁹ should be provided.</i>
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
	<i>Note that this can cover a situation where a Member is "renting" a room in a house under licensing arrangements or in shared accommodation. This could also include an allotment a Member has from their Council.</i>
Corporate tenancies	Any tenancy where (to a Member's knowledge)— <ul style="list-style-type: none"> (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
	<i>Note, this means any tenancies with the Council that a relevant person has (or their firm -if they are a business partner/or have a beneficial interest in the business).</i>
Securities	Any beneficial interest in securities of a body where— <ul style="list-style-type: none"> (a) that body (to Member's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— <ul style="list-style-type: none"> (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth

¹⁹ As per Adjudication Panel for England Decision APE 0167 Donington Parish Council case 11 June 2004.



	of the total issued share capital of that class.
	<i>Note that a Member will have an interest in the body if a relevant person is a business partner or a director of that body or has a beneficial interest in the securities. Securities, as per the 2012 Regulations cover shares, debentures, debenture stock, loan stock, bonds, units of a collective investment schemes within the meaning of the Financial Services and Markets Act 2000 and other securities of any description in the Member's authority area. It does not include money deposited with a building society.</i>

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

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

- Make written representations in as a private citizen to the Council. It is recommended that the existence and nature of the interest should be disclosed in such representations;
- Appoint an agent to undertake discussions with Officers (this can include a family member unconnected with the Council);
- Possibly request that another Member represents views on the subject;
- Apply for a dispensation – but this will only be considered on the statutory grounds set out under section 33 of the Act (see paragraph 8 of the Code and explanation below).

4.6: Declarable Interests (a)-(e)

The full wording is set out in the Code under paragraph 4.6. It will be a Declarable interest if an item of business (that is not classified as a DPI):

- (a) might reasonably be regarded as affecting the well-being or financial standing of Member/family/employer or a person or body with whom the Member has a **close association to**, greater than it would the majority of the Council Tax payers, ratepayers or inhabitants of the **ward for which the Member has been elected, or otherwise the NHDC's administrative area**; or
- (b) relates to or is likely to affect the interests listed in the Appendix A to the Code – for a Member's family/employer/ or a person or body a Member has a close association with; or
- (c) is one which is so **significant that it is likely to prejudice a Member's judgement** of the public interest; or



- (d) relates to the interests of someone or body who provided the Member with a gift or hospitality of at least £50 within the last 6 years of the date of the decision; or
- (e) relates to or affects any body the Member is a member of or in a position of general control or management which: the Member was appointed/nominated to by NHDC; exercises **functions of a public nature**; is directed for charitable purposes; or its principal purposes includes influence of public opinion or policy (including any political party or trade union).

Further clarification on the wording in bold is provided below.

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

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

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

“Ward and administrative area” issues – Paragraph 4.6(a)

This will be relevant on a case-by-case basis if the decision affects a particular ward or the Council’s administrative area. This could be an issue relating to a planning or licensing matter and will be a Declarable interest in a situation where, for example, in that ward where the planning case has arisen, the decision is likely to affect a Member/family/employer or someone the Member has a close association with more than the majority of tax payers or inhabitant of that ward.

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

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

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

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

What is “so significant that it is likely to prejudice a Member’s judgement” – paragraph 4.6(c)

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

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

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

If a reasonable member of the public with knowledge of all the relevant facts would think that the Member’s judgement of the public interest might be prejudiced, then a Member will have this type of Declarable interest that not only needs to be declared but this will mean (see paragraph 7 of the Code and below) that a Member will have to move to the public area and speak *as a member of the public would if public speaking is allowed*, can listen to any other public speeches, but must then leave the room.

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

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

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

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

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

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

Where relevant, and a Member received this gift or hospitality prior to election – then this will not apply – as it would not have been provided in connection with the Member’s role. This does not apply to gifts or hospitality that are unrelated to the role as a Member, such as Christmas gifts from friends or family, or gifts the Member has not accepted. It does not apply



to civic receptions or working meals that are authorised by the Council. Consider the ‘**NHDC Member Protocol for Gifts and Hospitality**’ and make declarations accordingly. This provides further clarification on what is and is not considered to be connected with the Member role. The Protocol and relevant declaration form are available from the Monitoring Officer or on the following page:

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

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

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

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

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

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

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

If a Member has a Declarable interest then the nature and extent must be orally declared by the Member, as soon as it becomes apparent at any meeting (under paragraph 6.2 of the Code). Whether a Member can remain and participate in the meeting will depend on whether this interest would be regarded as so significant that it is likely to prejudice a Member’s judgement of the public interest (see above explanation of public interest and actions required under paragraphs 7.3-7.5 of the Code). It is best to seek advice if unsure and heed that advice.

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

5: Sensitive Information (relating to DPIs)

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

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

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

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

6: Declaring Interests at meetings

Underlying reasons for paragraph 6 of the Code are the seven principles of public life (see section 3) and the need for openness, honesty and indeed other local government requirements of transparency. The public cannot be expected to know or check whether a Member has an interest, and it is therefore important that this is made clear in a meeting.

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

Under Paragraph 6.1, if any item of business of the authority relates to a subject in which a member has a DPI, then it must be declared at the meeting at or before the subject is considered even if the DPI is already on the Register of Interests. If it is not on the Register or not pending for the Register then the Monitoring Officer must be notified within 28 days.

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

This is subject to a Member having applied for *and having been granted a dispensation*. A relevant authority can grant a dispensation on the statutory grounds set out under section 33 of the Act and the decision in the first instance rests with the Monitoring Officer (*see paragraph 8 and below for the grounds of the application*).

7: Effect of Interests on Participation at Meetings

Paragraph 7 of the Code provides:

“7.1 If you are present at a meeting of the council and you have a Disclosable Pecuniary Interest relating to any business that is or will be considered at the meeting, you must not:

- (a) participate in any discussion of the business at the meeting, or if you become aware of your Disclosable Pecuniary Interest during the meeting participate further in any discussion of the business, or**
- (b) participate in any vote or further vote taken on the matter at the meeting.**

7.2 The prohibitions at paragraph 7.1 apply to any form of participation, including speaking as a member of the public. In certain circumstances you can request a dispensation from these prohibitions from the Monitoring Officer.

7.3 If you are present at a meeting of the council and you have a Declarable Interest relating to any business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest you must not participate in the discussion or vote on the item, although you may speak as a member of the public.#

7.4 If you have a Disclosable Pecuniary Interest, or a Declarable Interest which is so significant that you must not participate, you must leave the room or chamber where the meeting is being held unless you have received a dispensation from the Monitoring Officer.

7.5 If you are leaving the room or chamber in accordance with paragraph 7.4 you may listen to any speeches from the public but must leave prior to the item being presented or in any other case, whenever it becomes apparent that that business is being considered at that meeting.”

Paragraph 7 sets out how a Member needs to act if they have a DPI or Declarable interest. In part this was touched on under paragraph 4 above.

If a Member has a DPI the Act sets out legal requirements for how a Member should behave and these are replicated in part in paragraphs 7.1-7.2 and 7.4-7.5. Notwithstanding what is in the Code, if a Member fails to abide by that, without reasonable excuse, then a Member could face prosecution. In a nutshell if a DPI in an item of Council business s/he should not participate and should leave the room.

If a Member has a Declarable Interest then following declaration the Member may not remain and participate if this is so **significant that it is likely to prejudice the Member’s judgement of the public interest**. This test was explained under 4.6(c) above. It does not matter whether it actually would prejudice judgement or not. As indicated this is **an objective test**, it is what the reasonable member of the public would reasonably think if they knew all the relevant facts.

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

8: Dispensations

The Act allows Members to apply for a 'dispensation' if a Member has a DPI and this has been mentioned at various points of the Guide above. Simply put there are five statutory circumstances for an application and the Monitoring Officer will consider these on a case by case basis following an application by a Member. The relevant circumstances under section 33(2) of the Act are:

- “(a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,*
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,*
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area,*
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 33(4) from participating in any particular business to be transacted by the authority's executive, or*
- (e) considers that it is otherwise appropriate to grant a dispensation.”*

If the Monitoring Officer grants a dispensation, it may cover a particular meeting or item but must not exceed a period of four years under section 33(4) of the Act. If the dispensation is granted it will be in writing; however, that does not mean that a Member no longer needs to declare the DPI (either on the Register or at meetings) – as the Monitoring Officer is only allowed²⁰ to lift the restrictions on participating, discussing or voting on the matter. Any declaration of the interest should be followed by the explanation that a dispensation is in place.

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

[Potential approval date: 12 October 2016]
Appendix A– NHDC Code of Conduct

²⁰ Under section 33(1) of the Act.