



Department of the  
**Environment**

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# **The Draft Northern Ireland Local Government Code of Conduct for Councillors**

## **Consultation Document**

March 2014



This Consultation Document seeks views on the Department's proposals for the Northern Ireland Local Government Code of Conduct for Councillors.

**Comments should be sent by 30 April 2014 to:**

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Local Government Policy Division 1  
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Town Parks  
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## **Background**

### The Committee on Standards in Public Life

1. Following a number of highly publicised cases and concerns over unacceptable behaviour by holders of public office, the UK Government set up the Committee on Standards in Public Life (CSPL) in October 1994 to address the issues surrounding ethical standards. The CSPL has since established a reputation for authoritative expertise in the field of public sector ethics.

### The Tenth Report

2. The 10<sup>th</sup> report of the CSPL was entitled “Getting the Balance Right - Implementing Standards in Public Life”. Its aim was to examine the administrative procedures, which flowed from the implementation of the various recommendations of the CSPL since its formation in 1994. The selected issues for consideration included:
  - the management and enforcement of codes of conduct, including declarations of interest, across local government, the National Health Service and other public bodies; and
  - whether the Seven Principles of Public Life were being embedded into organisational culture and what steps were being taken to ensure that this involved the appropriate use of training and development.
3. The CSPL’s report, which was published on 19 January 2005, contained 33 recommendations, two of which related to local government in Northern Ireland. The UK Government subsequently agreed all the recommendations in its formal response to that Report.

4. The recommendations relating to ethical standards for local government in Northern Ireland were:

*“Recommendation 15:*

*Following the review of public administration, and upon the restoration of the Assembly in Northern Ireland, a Statutory Code of Conduct for Councillors should be introduced with a proportionate and locally-based framework for enforcement, drawing upon experience of other parts of the UK.*

*Recommendation 29:*

*The three principal regulators (Standards Board for England, Local Government Ombudsman for Wales, and Standards Commission for Scotland) should put in place formal arrangements for the sharing of experiences and best practice. This should be extended to include the body with designated responsibility for enforcement of a new statutory framework in Northern Ireland.”*

**Consultation on policy proposals for local government reform**

5. The consultation on the policy proposals for local government reform (November 2009) proposed that all written complaints regarding alleged breaches of ethical standards, should be referred to the Office of the Northern Ireland Commissioner for Complaints (the Commissioner). The Commissioner would decide whether a complaint should be referred to the relevant council for local resolution, or retained for investigation by the Commissioner’s office. If retained, the Commissioner would adjudicate on the case and, if necessary, apply any sanctions.

6. The consultation also proposed that each council should have an independent monitoring officer and a standards committee to deal with complaints referred to it by the Commissioner (i.e. more minor breaches). The independent monitoring officer would investigate and would report his/her findings to the standards committee to assess whether a breach had occurred and, if necessary, adjudicate on the matter. It was proposed that each standards committee should include independent members.
7. Responses to the consultation were supportive of the proposals; with strong support both for the introduction of a mandatory code of conduct and that the principles of conduct which would apply in councils should be the same as those which apply in the Assembly.
8. In response to the consultation, several respondents commented that consideration should be given to developments in other jurisdictions, particularly the proposals which were then in the Localism Bill.
9. Since the consultation was carried out, however, there have been a number of developments, both at the Assembly and in other jurisdictions, which have led to some proposed changes to the framework.
10. In the Assembly, the OFMDFM Committee (in July 2012) consulted on proposals to reform and update the Office of the Northern Ireland Ombudsman, which incorporates the Office of the Commissioner for Complaints, with the intention of creating a Northern Ireland Public Services Ombudsman (NIPSO). The proposals give consideration to extending the number of organisations and bodies that the NIPSO can investigate as well as the possible introduction of additional powers. The Department is aware that the Committee propose to bring forward a Bill to give effect to these proposals and that although

the content of the Bill has not been finalised, it is likely to have an impact on the Office of the Commissioner.

11. As a result of the Localism Act 2011, the English standards system has become less prescriptive with the abolition of the Standards Board regime and the removal of the requirements for local authorities to adopt a model code of conduct and maintain standard committees. Instead, each authority must adopt its own code, which must be consistent with the seven Nolan principles, and must put in place arrangements under which relevant allegations can be investigated and determined. These arrangements must include provision for the appointment of an independent person, whose views are to be sought and taken into account before a decision is made. The amendments taken forward in the Localism Act reflect a shift away from an overly bureaucratic system.

### **Changes to the previously proposed ethical standards framework**

12. The new councils will be taking on new functions and responsibilities and will have a new community planning duty and revised governance and performance improvement frameworks. The revised ethical standards framework proposed by the Department is that the investigation and adjudication processes should be contained completely within the Commissioner's office. This is a less bureaucratic system and will allow councillors, of the new councils, to concentrate on their new duties and responsibilities rather than having to become involved in the setting up of a new ethical standards framework. This revised framework was agreed by the Executive.



13. This change, to the previously proposed framework, has a number of advantages:

- it removes the need for appointing monitoring officers and establishing standards committees (including any independent membership) in councils;
- the involvement of the Commissioner's office adds transparency, independence and ensures fairness and these factors are likely to improve public confidence in the system;
- it ensures a uniform approach to all complaints; and
- the Commissioner is experienced in carrying out investigations.

14. Introducing this revised model will allow the new councils to bed down without having to become involved in dealing with alleged breaches in standards and the setting up of standards committees. It will be less bureaucratic and less costly for councils as they will not have to pay remuneration and expenses to independent members of standards committees.

15. Experience in other jurisdictions has also shown that the standards framework is an area that can give rise to difficult and sensitive issues. By allowing the Commissioner to deal with all alleged breaches of the code in the first few years of the new councils, this will allow a body of precedent to build up.

## **Costs**

16. The PricewaterhouseCoopers Economic Appraisal (October 2009) on Local Government Service Delivery had given indicative costs for the proposed new ethical standards framework of £800,000 i.e. £50,000

for each of the new councils in respect of the setting up of standards committees and £250,000 for additional resources in the Commissioner's office. The modified proposals (because councils will no longer have to establish standards committees and appoint independent monitoring officers) would therefore see a reduction in estimated costs of £550,000 for councils. There would, however, still be resource implications for the Commissioner's office (estimated at £380,000). However, the new framework will produce a more cost effective system and an overall reduction in costs by £420,000.

17. It is proposed that councils will still provide for these costs and, subject to the agreement of the Assembly, the Local Government Bill will provide for the Department to apportion the cost between councils. The Bill will also place a requirement on the Department to consult with councils, on the method of apportionment, prior to finalising the amount due.

### **The Local Government Bill**

18. The Local Government Bill was introduced into the Assembly on 23 September 2013 and has just completed its Committee Stage. The Bill provides, among other things, for:

- the introduction of a mandatory code of conduct for councillors which will also specify the principles of conduct;
- the declaration of acceptance of office that a councillor will be required to serve on the clerk of their council to include an undertaking that the councillor will observe the code of conduct;
- all complaints regarding alleged breaches of the code to be referred to the Commissioner for Complaints;

- the Commissioner to be responsible for investigating, adjudicating and, if necessary, recommending sanctions regarding alleged breaches of the code; and
- the Commissioner to issue guidance on any matters relating to the ethical framework.

### **Sanctions applied by the Commissioner**

19. The Bill also provides for the imposition of sanctions, where the Commissioner decides that a person has failed to comply with the Code. The Commissioner must decide whether no action should be taken or whether the nature of the failure is such that the Commissioner should-
- (a) censure the person in such terms as the Commissioner thinks appropriate;
  - (b) suspend or partially suspend the person from being a councillor for such a period, and in such a way, as the Commissioner thinks appropriate, however, that period shall not exceed one year or, if shorter, the remainder of the person's term of office; or
  - (c) disqualify the person for being, or becoming (whether by election or otherwise) a councillor, for such a period as the Commissioner thinks appropriate but not exceeding five years.

### **Provision of Indemnities**

20. The Department made the Local Government (Indemnities for Members and Officers) Order (Northern Ireland) 2012 (the 2012 Order) which came into operation on 27 November 2012. That Order conferred powers on district councils to indemnify, subject to certain restrictions, some or all of their members and officers in respect of personal liabilities incurred in connection with service on behalf their

councils. The provisions within that Order mirrored those available to councils in England and Wales, with the exception of the provisions relating to the Code of Conduct for Councillors. With the introduction of a mandatory Northern Ireland Local Government Code of Conduct for Councillors, the Department proposes to amend this Order to reflect the position in other jurisdictions.

21. The 2012 Order requires councils to include terms within any indemnity (including any insurance secured) for the re-payment of sums expended by the council or insurer in any cases in which a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding or conviction). The Department is seeking comments on its proposal to amend the Local Government (Indemnities for Members and Officers) Order (Northern Ireland) 2012, to reflect the position in other jurisdictions and extend the above-mentioned requirement to re-pay any sums expended to cases in which a member has been found to be in breach of the Northern Ireland Local Government Code of Conduct for Councillors.

### **Way forward**

22. During initial discussions on the introduction of the Code, both with key stakeholders and the Environment Committee, the application of the Code to existing councils was highlighted, with particular regard to the difficulties which may arise in running two systems of ethical standards. The main issue related to councillors who were members of both the existing council and also the new council and when the business of these councils overlapped. The decision of which Code of Conduct should apply was raised. To address this, the Department intends to apply the proposed mandatory Code of Conduct to all councillors from May 2014; this will be by way of legislation which will

provide for the transitional arrangements between existing and new councils.

23. It is intended that the ethical standards framework provisions in the Bill should be reviewed after 3-4 years, to consider whether the framework should be modified to include more involvement from councils, which will include consideration of whether the establishment of standards committees within councils is preferable and also the role of the Commissioner in taking forward both investigation and adjudication.
24. As mentioned above, the Bill includes a provision to provide for a mandatory code of conduct. The Department intends for this code to become mandatory shortly after the Bill receives Royal Assent. This will require the Department to lay a draft of that Code before the Assembly to receive approval.
25. The Department has produced a draft of the Code which has been prepared, in conjunction with the Northern Ireland Commissioner for Complaints, and is now seeking comments on-
  - the content of the code; and
  - the provision of indemnities.
26. All comments should be forwarded to the address below by 30 April 2014.

**Department of the Environment  
Local Government Policy Division 1  
Level 4, Causeway Exchange  
1-7 Bedford Street  
Town Parks  
Belfast, BT2 7EG.**

# The Northern Ireland Local Government Code of Conduct for Councillors



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**Environment**

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Approved by the Northern Ireland  
Assembly on \*\*2014

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## 1. **INTRODUCTION**

### **Effective Date of the Code of Conduct for Councillors**

- 1.1 Parts 1 to 8 of this Code come into force on 26 May 2014 and Part 9 (Planning) shall come into force on 1 April 2015. This Code has been laid in draft and approved by a resolution of the Assembly. The Code may be amended or revised at any time but such amendment or revision is subject to the same Assembly procedure.

### **Background**

#### The Local Government Act (Northern Ireland) 2014

- 1.2 As a consequence of decisions taken by the Executive on the future shape of local government, the 2014 Act contains a number of provisions for the reform of local government. This includes a new ethical framework for local government in Northern Ireland, a key element of which is the introduction of a mandatory code of conduct for councillors. Previously, councillors were guided by a non mandatory Northern Ireland Code of Local Government Conduct which issued in April 2003.
- 1.3 The 2014 Act:-
- provides for the introduction of a mandatory Northern Ireland Local Government Code of Conduct for Councillors (“the Code”);
  - imposes a requirement for councillors to observe the Code; and
  - establishes mechanisms for the investigation and adjudication of written complaints.
- 1.4 The 2014 Act requires the Department to consult councils and such associations and bodies representative of councils and council officers and such other persons as appear to it be appropriate, before issuing or revising a mandatory code.

## **Public expectations**

- 1.5 The Northern Ireland public has the right to expect high standards of behaviour from councillors and the manner in which they should conduct themselves in undertaking their official duties and in maintaining working relationships with fellow councillors and council employees. As a councillor, you must meet those expectations by ensuring that your conduct complies with the Code. The Code details the principles and rules of conduct which is expected of you when acting as a councillor and in conducting council business. Therefore your behaviour will be judged against these standards of conduct.

## **Guidance**

- 1.6 To aid you in complying with this Code, you should read the guidance available from:
- the Northern Ireland Commissioner for Complaints, on the application of the Code and the complaints procedure,
  - the Department, on planning matters, and
  - the Equality Commission for Northern Ireland.

Information on where this guidance is available and additional contact details are set out as Annex A to the Code.

## **2. Requirement to Comply with the Code**

### **Who does the Code apply to?**

- 2.1 This Code replaces the non statutory code issued in April 2003 and applies to councillors of councils established in accordance with section 1 of the 1972 Act as amended by the Local Government (Boundaries) Act (Northern Ireland) 2008.
- 2.2 The Code will also apply to councillors of existing councils<sup>1</sup> and shall continue to apply until those councils are dissolved in April 2015.
- 2.2 The 2014 Act requires a councillor to serve on the Chief Executive of their council a declaration of acceptance of office before they can act in the capacity of councillor. This declaration includes an undertaking that the councillor has read and will observe the Code (as revised from time to time).

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<sup>1</sup> “existing councils” refers to those councils currently in place prior to the local government elections on 22 May 2014

2.3 The 2014 Act also requires that a person who is not an elected person, but who becomes a member of any committee of a council, may not act as such unless they have given a written undertaking to the Chief Executive of the council and in the case of a joint committee, to each of the Chief Executives of the councils constituting the committee. This also includes an undertaking that they have read and will observe the Code (as revised from time to time).

2.4 In summary, the Code applies to the following persons-

- (a) any person who is elected to office within a council,
- (b) any person chosen under section 11(4b) of the Electoral Law Act (Northern Ireland) 1962 to fill a casual vacancy,
- (c) any person treated as a non-voting member by section 21 of the 2014 Act, and
- (d) any person who is not an elected representative as mentioned in section 32(4) of the 2014 Act,

Throughout the Code, where the term “councillor” is used it shall also refer to those persons mentioned in sub-paragraphs (a) to (d) above.

2.5 As a councillor, it is your responsibility to make sure that you are familiar with the provisions of the Code and that you comply with those provisions.

2.6 You are entitled to legally express any political opinion that you hold. In doing so, however, you should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct.

### **When does the Code apply?**

2.7 You must observe the Code:

- (a) whenever you conduct the business, or are present at a meeting, of your council;
- (b) whenever you act, claim to act or give the impression you are acting in the role of a councillor; and
- (c) whenever you act, claim to act or give the impression you are acting as a representative of your council.

2.8 In addition to having effect in relation to conduct at the times mentioned above (paragraph 2.6), at all times you must not conduct yourself in a manner which would reasonably be regarded as bringing your position as a councillor, or your council, into disrepute.

#### Appointment to other bodies

2.9 As a councillor you may be appointed or nominated to represent your council on another body. If so:

- (a) where that body has a code of conduct relating to its members, you must comply with that code when acting on behalf of that body; and
- (b) where that body does not have a code of conduct relating to its members, you must, when acting on behalf of that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject and if you become aware of any such conflict, you should draw it to the attention of your council and the other body as it becomes apparent to you.

2.10 Where your appointment to another body does not arise from your position as a councillor, paragraph 2.7 has effect in that you must not conduct yourself in a manner which would reasonably be regarded as bringing your position as a councillor, or your council, into disrepute.

#### **Enforcement of the Code**

2.11 The 2014 Act gives the Northern Ireland Ombudsman, in his capacity as the Northern Ireland Commissioner for Complaints (the Commissioner), responsibility for the operation of the enforcing mechanisms of this Code. The 2014 Act extends the functions of the Commissioner's Office to include the investigation of, and adjudication on, failure to comply with the Code.

2.12 The Commissioner may investigate written complaints from any person that a councillor (or former councillor) has failed, or may have failed, to comply with the Code. The Commissioner may also investigate cases of alleged failure to comply with the Code, which come to his attention as a result of an investigation of a written complaint.

2.13 Where the Commissioner, having undertaken an investigation, determines that he should make an adjudication on the matters investigated, he will decide whether or not there has been a failure to comply with the Code. Where the Commissioner decides that there has been such a failure, he will decide whether no action should be taken or whether he should-

- (a) censure the person found to have failed to comply with the Code;
- (b) suspend, or partially suspend, the person from being a councillor for a period of up to one year; or
- (c) disqualify the person for being, or becoming, a councillor for a period of up to five years.

### 3. **PRINCIPLES OF CONDUCT**

3.1 The Code is based on 12 principles, which are intended to promote the highest possible standards of behaviour for councillors. These principles draw on the seven principles of conduct that the Committee on Standards in Public Life believed ought to underpin public life<sup>2</sup>, and five further principles of conduct that have been adopted by the Northern Ireland Assembly.

3.2 You are required to have regard to the principles in undertaking your role as a councillor. The principles are complementary to the rules set out in the Code. Your compliance with the rules will help ensure that you satisfy the 12 principles.

3.3 The 12 principles of conduct are:

#### **Public Duty**

You have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in you.

You have a general duty to act in the interests of the community as a whole.

You have a special duty to your constituents and are responsible to the electorate who are the final arbiter of your conduct as a public representative.

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<sup>2</sup> Committee on Standards in Public Life, Members of Parliament, ministers, civil servants and quangos (First Report) May 1995

## **Selflessness**

You should act in the public interest at all times and you should take decisions solely in terms of the public interest. You should not act in order to gain financial or other material benefits for yourself, your family, friends or associates.

## **Integrity**

You should not place yourself under any financial or other obligation to outside individuals or organisations, which might reasonably be thought by others to influence you in the performance of your duties as a councillor.

## **Objectivity**

In carrying out council business, including considering public appointments, awarding contracts or recommending individuals for rewards and benefits, you should make choices on merit.

## **Accountability**

You are accountable to the public for your decisions and actions and for the way that you carry out your responsibilities as a councillor and must submit yourself to whatever scrutiny is appropriate to your responsibilities.

## **Openness**

You should be as open as possible about the decisions and actions that you take. You should give reasons for your decisions when required and restrict information only when the wider public interest clearly demands it.

## **Honesty**

You should act honestly. You have a duty to declare any private interests relating to your public duties. You should take steps to resolve any conflicts between your private interests and public duties at once and in a way that protects the public interest.

## **Leadership**

You should promote and support these principles by leadership and example in order to establish and maintain the trust and confidence of your constituents, and to ensure the integrity of your council and its councillors in conducting business.

## **Equality**

You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependants.

## **Promoting Good Relations**

You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms.

## **Respect**

It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and councils. You should therefore show respect and consideration for others at all times

## **Good Working Relationships**

***Between councillors*** – you should work responsibly with other councillors for the benefit of the whole community. You must treat other councillors with courtesy and respect. You must abide by your council's standing orders and should promote an effective working environment within your council.

***Between councillors and council employees*** - The relationship between councillors and employees must at all times be professional, courteous and based on mutual respect. You should show respect and consideration for council employees at all times and ensure that your actions do not compromise their impartiality.

## 4. RULES OF GENERAL CONDUCT

### Requirements as a councillor

- 4.1 Councillors hold public office under the law and must act:
- (a) lawfully;
  - (b) in accordance with the Code;
  - (c) in accordance with the Commissioner's guidance on matters relating to the conduct of councillors; and
  - (d) in line with the standing orders of their council.
- 4.2 It is your personal responsibility to comply with these requirements and to review regularly (at least annually and when your particular circumstances change) your personal circumstances with this in mind, and to take steps to mitigate any conflict of interests. This may be in relation to a change of business interests, involvement on a new committee or a change in family interests. Where there is a possible conflict of interest, you may wish to seek advice from your own solicitor or other relevant professional.
- 4.3 You must not at any time, whether in the course of your duties as a councillor or in private (*as this may have an impact on the public's perception of your office*), procure, advocate or encourage any action contrary to the Code.
- 4.4 You must work responsibly and with respect, with others and with employees of councils. The "Protocol for Relations between Councillors and Employees in Northern Ireland District Councils<sup>3</sup>", which is included as Appendix 3 in the Code of Conduct for Local Government Employees, is available on the Local Government Staff Commission's website
- [http://www.lgsc.org.uk/fs/doc/publications/EMPLOYEE\\_CODE\\_FEBRUARY\\_2004.doc](http://www.lgsc.org.uk/fs/doc/publications/EMPLOYEE_CODE_FEBRUARY_2004.doc)

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<sup>3</sup> The Department notes this Protocol is being reviewed and will update this reference to any revised version.



## **Behaviour towards other people**

### **4.5 You must:**

- (a) show respect and consideration for others;
- (b) not use bullying behaviour or harass any person; and
- (c) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your council.

## **Behaviour of councillors**

### **4.6 You must:**

- (a) report, whether through your council's own reporting procedure or direct to the proper authority, any conduct by another person which you believe involves or is likely to involve criminal behaviour;
- (b) comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner's statutory powers;
- (c) not make vexatious, malicious or frivolous complaints against other councillors or anyone who works for, or on behalf of, your council; and
- (d) promote the Code and the Principles on which it is based.

4.7 You must report to the Commissioner the conduct of any fellow councillor which you believe is, or is likely to be, in breach of the Code. However, you must not make unfounded accusations or malicious complaints against other councillors.

4.9 You are reminded that councils have specific responsibilities under equality legislation. That legislation underpins many of the requirements of this Code. You should ensure that you are familiar with the relevant statutes and provisions and, in particular, with the obligations contained in your council's equality scheme, when taking decisions.

4.10 This will enable you to have due regard to the need to promote equality of opportunity on grounds of age, marital status, disability, political opinion, race, religious belief, sex, sexual orientation, and whether or not people have dependants; and to have regard to the desirability of promoting good relations between people of different racial groups, religious belief or political opinion.

- 4.11 You must maintain and strengthen public trust and confidence in the integrity of your council. You must promote and support the Code at all times and encourage fellow councillors to follow your example.
- 4.12 You must assist your council to act, as far as possible, in the interests of the whole community. Whilst individuals are entitled to pursue their own personal concerns about local issues, you must not represent their views above the wider public interest.
- 4.13 The Code of Practice on Local Authority Accounting requires the disclosure of related party transactions. You must co-operate with your council with regard to providing the necessary information to be included in the annual accounts of the council.

### **Participating in meetings/reaching decisions**

- 4.14 You must:
- (a) when participating in meetings or reaching decisions regarding the business of your council, 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 your council's officers, in particular, by the chief executive, the chief finance officer (where appropriate) or the council's legal advisers; and
  - (b) give reasons for your decisions, when required to do so, in the interests of fairness, openness and accountability and in accordance with any statutory requirements.

### **Disclosure of information**

- 4.15 You must not 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 to do so by law.

### **Use of your position**

- 4.16 You must not 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.

## **Use of council resources**

- 4.17 You must not use, or authorise others to use, the resources of your council:
- (a) imprudently;
  - (b) in breach of your council's requirements;
  - (c) unlawfully;
  - (d) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of your council or of the office to which you have been elected or appointed;
  - (e) improperly for political purposes; or
  - (f) improperly for private purposes.

## **Dealings with your council**

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

## **Expenses and allowances/gifts and hospitality**

- 4.19 You must:
- (a) observe the law and your council's rules governing the claiming of expenses and allowances in connection with your duties as a councillor;
  - (b) not accept from anyone gifts (other than civic gifts or those of a trivial/inexpensive nature), hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your council), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation;
  - (c) within 28 days of receiving any gift, hospitality, material benefit or services mentioned in paragraph (b) which is above a value specified in a resolution of your council, provide written notification to your Chief Executive of the

existence and nature of that gift, hospitality, material benefit or service and in accordance with any standing orders of your council; and

- (d) discourage gifts and offers of hospitality to a family member.

## 5. **REGISTRATION OF INTERESTS**

### **The role of the Chief Executive**

- 5.1 Section 65 of the 2014 Act requires every Chief Executive to ensure that their council has established and maintains a register of member's interests. In addition, this Code recommends that a register for gifts and hospitality should also be established and maintained and that procedures are in place for dealing with relevant declarations of interests.

### **Interests**

- 5.2 You must regard yourself as having a personal interest in any business of your council if it relates to or is likely to affect:
  - i. any employment or business carried on by you;
  - ii. any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
  - iii. any person, other than your council, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a councillor;
  - iv. any corporate body which has a place of business or land within your council's district, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
  - v. any contract for goods, services or works made between your council and you or a firm in which you are a partner, an unincorporated body (i.e. Industrial & Provident Society), a company of which you are a remunerated director, or a body of the description specified in subparagraph (iv) above;
  - vi. any land in which you have a beneficial interest and which is within your council's district;

- vii. any land where the landlord is your council and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- viii. any body to which you have been elected, appointed or nominated by your council;
- ix. any —
  - (aa) public authority or body exercising functions of a public nature;
  - (bb) company, industrial and provident society, charity, or body directed to charitable purposes;
  - (cc) body whose principal purposes include the influence of public opinion or policy;
  - (dd) trade union or professional association; or
  - (ee) private club, society or association operating within your council's district,  
in which you have membership or hold a position of general control or management; and
- x. any land within your council's district in which you have a licence (alone or jointly with others) to occupy for 28 days or longer.

### **Registration of financial and other interests and memberships and management positions**

- 5.3 Subject to the paragraphs 5.6 and 5.7, you must, within 28 days of your election or appointment to office (if that is later), register your financial interests and other interests, where they fall within a category mentioned above, in your council's register maintained under section 65 of the 2014 Act by providing written notification to your Chief Executive.
- 5.4 You must, within 28 days of becoming aware of any registerable interest or change to any registered interest, register that new interest or change by providing written notification to your Chief Executive.
- 5.5 The requirement to register an interest does not apply to sensitive information determined in accordance with the following paragraph.

## **Sensitive information**

- 5.6 Where you consider that the information relating to any of your personal interests is sensitive information, and your Chief Executive agrees, you need not include that sensitive information when registering that interest or, as the case may be, a change to the interest.
- 5.7 You must, within 28 days of becoming aware of any change of circumstances which means that information previously excluded due to it being sensitive is no longer sensitive, notify your Chief Executive asking that the information be included in your council's register of members' interests.
- 5.8 In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## **6. DISCLOSURE OF INTERESTS**

### **Pecuniary interest**

- 6.1 Section 28 of the Local Government Act (Northern Ireland) 1972 (the "1972 Act") requires you to declare any pecuniary interest (including that of a spouse you are living with) that you may have in any matter coming before any meeting of your council. Such interests will be recorded in the statutory register kept by your council for this purpose.
- 6.2 You must not speak or vote on a matter in which you have a pecuniary interest. If such a matter is to be discussed by your council, you must withdraw from the meeting whilst that matter is being discussed.

### **Private or personal non-pecuniary interest**

- 6.3 You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting. In addition to those areas set out in paragraph 5.2, an interest will also be significant where you anticipate that a decision on the matter might reasonably be deemed to benefit or disadvantage yourself to a greater extent than other council constituents. Any sensitive information mentioned in paragraphs 5.6 to 5.8 is not required to be given.

6.4 You must declare any significant private or personal non-pecuniary interests in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or sub-committee meeting) when the matter is being discussed. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest.

### **Dispensations**

6.5 In exceptional circumstances, you may be able to get a dispensation to speak and vote at a council meeting in spite of a pecuniary interest. The Department may grant such a dispensation under section 29 of the 1972 Act.

6.6 On occasions, you may feel that it would be to your council's benefit if you were to remain in a council meeting when a matter in which you have a significant private or personal non-pecuniary interest is to be debated. Before doing so, you must consider whether your interest is so significant that it would be wrong in any circumstances for you to remain. Your council may have specific guidance on such matters. Subject to this, you may speak and vote on such a matter if **(but only if)**:

- at least half of the council or committee would otherwise be required to withdraw from the debate due to their personal interests in the matter; or
- your withdrawal, together with that of other councillors of the council or committee who are required to withdraw due to their personal interests in the matter, would leave the council or committee without a quorum.

6.7 In those circumstances outlined in the preceding paragraph, you should take advice on the matter from a relevant senior council employee. If you decide to remain in the meeting, you must declare that decision and your reasons for doing so.

6.8 In the case of a sub-committee which is very small and where a large proportion of councillors declare a personal interest in the matter, it will usually be more appropriate for the matter to be referred to the parent committee.

6.9 It would, however, be appropriate for you to remain at a council meeting and speak and vote on a matter in which you have declared a significant private or personal non-pecuniary interest if your interest arises because you are:

- a member of a public body; or
- a member or supporter of a charity, voluntary body or other organisation formed for a public purpose (i.e. not for the personal benefit of members).

However, except where you have been appointed by your council as a representative on the organisation, you must not vote (although you may speak) on any matter directly affecting the finances or property of the organisation if you are a member of the organisation's management committee or governing body.

- 6.10 Section 30 of the 1972 Act requires you to disclose to the council, in writing, any relevant family relationship, as set out in paragraph (6) of that section, known to exist between you and any person you know either holds, or is a candidate for appointment to, any office in the council.
- 6.11 The requirement to make your relevant interests known on matters, in council and committee meetings, also applies in your dealings with council employees and in your unofficial relations with fellow councillors.

## **7. LOBBYING AND ACCESS TO COUNCILLORS**

- 7.1 In order for a council to fulfil its commitment to being open, accessible, and responsive to the needs of the public, it should encourage appropriate participation by organisations and individuals in the decision-making process. Clearly, however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the council conducts its business.
- 7.2 As a councillor you will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual councillors or council committees. The rules in this Code set out how you should conduct yourself in your contacts with those who seek to influence you.
- 7.3 You may be lobbied by a wide range of people including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the council or a councillor.



## **Rules of Conduct regarding lobbying**

7.4 If you are lobbied on matters such as applications made under regulatory powers or matters of a quasi-judicial nature, such as the determination of certain licence applications, and you will have a role in the council's decision on that matter, you must:

- (a) make it clear that you are not in a position to lend support for or against any such application; and
- (b) direct any such representations, to the appropriate department of the council.

This does not prevent you from seeking factual information about the progress of the case.

7.5 If you are asked to decide on such matters, you must not:

- (a) organise support for a particular recommendation on the matter;
- (b) organise opposition to a particular recommendation on the matter;
- (c) lobby other councillors about the matter;
- (d) comply with political group decisions on the matter where these differ from your own views; or
- (e) act as an advocate to promote a particular recommendation in relation to the matter.

7.6 This Part also applies in relation to individual staffing matters such as the appointment or discipline of employees.

## **8. DECISION-MAKING**

8.1 You must ensure a proper and fair hearing and avoid bias, or conduct that may give any impression of bias, in relation to statutory decision making processes. These provisions apply not only to decisions made under planning legislation but to a number of other decisions of a quasi-judicial or regulatory nature, which a council may also have to consider. These will include applications for various licences and a range of other similar applications where the issuing of a statutory approval or

consent is involved. This also includes where a council is acting in an enforcement, disciplinary or adjudicatory role.

8.2 In taking decisions on such matters, you may have to take account of different points of view or make decisions based on specified statutory criteria.

8.3 In such cases, you must:

(a) ensure that decisions are properly taken;

(b) ensure that parties involved in the process are dealt with fairly;

(c) not only act fairly, but also be seen to act fairly;

(d) not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any such decision before the appropriate council meeting; and

(e) only take into account relevant and material considerations and should discount any irrelevant or immaterial considerations.

8.4 You must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct, to reduce the risk of your, or your council's, decisions being legally challenged.

8.5 Whilst council business decisions will normally be made solely on merit, you may on occasions be expected to have regard to formal council policy on allocating appointments in accordance with political proportionality. This policy does not apply to the appointment of council employees or the award of contracts.

## **9. APPLICATION OF THE CODE OF CONDUCT WITH REGARD TO PLANNING MATTERS**

9.1 Care must be taken when dealing with planning matters. All councillors will have contact with planning issues, either as advocates for or against planning applications, as members of the planning committee, or as members of the full council.

9.2 Your role as a councillor is to represent the views and aspirations of your community through development of the local development plan, discussions with developers and council planning officers or deciding on planning applications. This Code (and any associated guidance) is intended to assist you in balancing the interests of developers and interest groups with taking planning decision, by applying your local

knowledge and the advice and guidance of planning officers, in a fair, impartial and transparent way, for the benefit of the whole community. This Code applies to councillors at all times when involving themselves in the planning process, including taking part in the decision-making meetings of the council or when involved in less formal occasions, such as meetings with officers or the public. It applies equally to local plan development and planning enforcement as it does to planning applications.

### **Development management**

- 9.3 Your involvement in the development management process is crucial. As a councillor you can encourage developers and others to engage with the council and residents in the planning process. It is important that you represent the needs of your community in discussions with developers. Lobbying is therefore a normal and perfectly proper part of the political process
- 9.4 However, particular considerations apply when you are dealing with planning applications, as lobbying can lead to the impartiality and integrity of a councillor being called into question. Given that a decision on a planning application cannot be made before the planning committee meeting has been held, when all available information relating to the application is available and has been considered (this refers to planning applications which are not dealt with under schemes of delegation), you should take particular care (if you are a member of the planning committee) about expressing an opinion that may be taken as indicating you have already made up your mind on the issue before you have heard all the evidence and arguments.
- 9.5 If you are a member of the planning committee, you must not state your intention to vote in a particular way before the committee meeting has taken place. It is entirely appropriate for councillors, including those who will have a decision-making responsibility, to make known to planning officers what representations from constituents and prospective developers they have received on a planning application, to attend public meetings/events and to assist constituents in making their views known to the relevant planning officer. If you do express an opinion, you must make it clear that you will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.
- 9.6 Planning decisions can only be made on valid planning grounds and are based on making an informed decision within a local and regional policy framework, in the public interest. If you sit on a planning decision-making committee, you must strike a

balance between the wishes of constituents, residents, developers and the wider public interest and to do so in a way that is impartial and transparent.

9.7 Where you will be participating in making the decision, you must not:

- (a) organise support for, or opposition;
- (b) lobby other councillors; or
- (c) act as an advocate,

to promote a particular recommendation on a planning application, on a planning agreement, or on taking enforcement action. However, other councillors who are not part of the decision-making process can make representations and address the relevant committee.

9.8 You must not act or take planning decisions in order to gain financial or other material benefits for yourself, family, friends or associates.

#### **Decisions contrary to officer recommendation**

9.9 You must not seek to apply undue pressure towards planning officers to provide a particular recommendation on any planning decision. If you propose, second or support a decision contrary to an officer's recommendation, you must only do so on the basis of sound planning considerations which must fairly and reasonably relate to the application concerned. These considerations include planning policy, landscaping, impact on the neighbourhood, planning history, etc.

#### ***Decisions contrary to local development plan***

9.10 If you propose, second or support a decision contrary to the development plan, you must only do so on the basis of sound planning considerations, which must fairly and reasonably relate to the application concerned, and you must clearly demonstrate how these considerations justify overruling the development plan.

#### **Policy and strategic issues**

9.11 Councillors have a vital role in facilitating engagement with their communities in the production of planning policy by encouraging them to express their views on the plan-making process. In your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making,

approval or amendment of the development plan, including supplementary planning guidance published by the council.

- 9.12 Planning legislation requires councillors of a council to determine all planning applications in accordance with the development plan, unless material considerations indicate otherwise. You must undertake this responsibility without undue influence or personal interest.

### **Other interests**

- 9.13 If you have substantial land, property or other interests which would prevent you from voting on a regular basis, you must not sit on a decision-making committee that deals with planning applications.
- 9.14 You must not act on behalf of, or as an agent for, an applicant for planning permission with the council other than in the course of your professional role which you have registered.
- 9.15 When making a planning application for your own property or that of a family member, friend or associate, you must not take any further part in the development management process following submission of the application. Such applications should be decided by the planning committee and not dealt with by officers under delegated powers. You have the same rights to explain your proposal to an officer but you must not seek to improperly influence the decision.
- 9.16 If you work as a lobbyist for a developer, you must declare this as an interest and you should not then be involved in any decision-making process relating to that developer.

### **Unauthorised development**

- 9.17 If you are made aware of an unauthorised development and you refer the matter to the council for possible enforcement action, you must advise all subsequent inquirers to deal directly with the relevant department/officer, and you should not lobby for a particular outcome. This does not prevent you from seeking factual information about the progress of the case.
- 9.18 Where you have an interest in the outcome of a planning committee decision on enforcement action, you must disclose that interest and not take part in, or seek to influence, the decision.



## INFORMATION ON GUIDANCE

<p><b><u>The Northern Ireland Commissioner for Complaints</u></b></p> <p>Telephone : 028 902 33821  <b>OR</b>  Text phone : 028 908 97789  <b>OR</b>  Email : <a href="mailto:ombudsman@ni-ombudsman.org.uk">ombudsman@ni-ombudsman.org.uk</a>  <b>OR</b>  <b>Via Post</b></p> <p>The Ombudsman  Freepost BEL 1478  Belfast  BT1 6BR</p> <p><b>OR</b></p> <p>The Ombudsman  33 Wellington Place  Belfast  BT1 6HN</p>	<p><b><u>Equality Commission for Northern Ireland</u></b></p> <p><b>Equality House</b>  <b>7 - 9 Shaftesbury Square</b>  <b>Belfast</b>  <b>BT2 7DP</b></p> <p>Telephone : 028 90 500 600  Textphone : 028 90 500 589  Fax : 028 90 248 687  Email : <a href="mailto:information@equalityni.org">information@equalityni.org</a></p> <p>Website: <a href="http://www.equalityni.org">www.equalityni.org</a></p>
<p><b><u>The Department of the Environment</u></b></p> <p>Local Government Policy Division 1  Causeway Exchange  1-7 Bedford Street  Town Parks  Belfast, BT2 7EG.</p> <p><b>Website: <a href="http://www.doeni.gov.uk">www.doeni.gov.uk</a></b>  <b>E-mail: <a href="mailto:LGPD@doeni.gov.uk">LGPD@doeni.gov.uk</a></b>  <b>Textphone 028 905 40642</b></p>	

## GLOSSARY

In this Code:

**“the 1972 Act”** means the Local Government Act (Northern Ireland) 1972;

**“the 2014 Act”** means the Local Government Act (Northern Ireland) 2014;

**“Councillor”** for the purposes of this Code means-

- (e) any person who is elected to office within a council,
- (f) any person chosen under section 11(4b) of the Electoral Law Act (Northern Ireland) 1962 to fill a casual vacancy,
- (g) any person treated as a non-voting member by section 21 of the 2014 Act, and
- (h) any person who is not an elected representative as mentioned in section 32(4) of the 2014 Act;

**“council”** means the council of a local government district established in accordance with the Local Government (Boundaries) Act (Northern Ireland) 2008<sup>4</sup>;

**“Chief Executive”**, means a person appointed as clerk of a council; and

**“meeting”** means any meeting—

- (a) of the relevant council or of a committee or sub-committee of the relevant council,
- (b) of the executive of the relevant council or of a committee or sub-committee of the executive of the relevant council,
- (c) of a joint committee or sub-committee of a joint committee which includes the relevant council, or
- (d) where members or officers of the relevant council are present, including circumstances where a member of an executive or officer of the council, acting alone exercises a function of the council.

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<sup>4</sup> Until 31 March 2015, “council” shall also include those councils in place prior to the Local Government Elections of 22 May 2014 and the Code shall apply to the councillors of those councils.



### **SANCTIONS APPLIED BY THE COMMISSIONER**

Under section 62(3) of the Local Government Act (Northern Ireland) 2014, where the Commissioner decides that a person has failed to comply with the Code, the Commissioner must decide whether no action should be taken or whether the nature of the failure is such that the Commissioner should-

- a. censure the person in such terms as the Commissioner thinks appropriate;
- b. suspend or partially suspend the person from being a councillor for such a period, and in the way, as the Commissioner thinks appropriate. However, that period shall not exceed one year or, if shorter, the remainder of the person's term of office; or
- c. disqualify the person for being, or becoming (whether by election or otherwise) a councillor, for such a period as the Commissioner thinks appropriate but not exceeding five years.

## **List of Consultees**

Age Concern NI

All Northern Ireland District Councillors

All Northern Ireland District Councils

An Munia Tober

arc21

Archbishop of Armagh and Primate of all Ireland

Association of Local Government Finance Officers

Association for Public Service Excellence

British Chamber of Commerce

Belfast Solicitors Association

Carers NI

Chief Local Government Auditor

Chinese Welfare Association

Church of Ireland

Civic Forum

Civil Law Reform Division

Coalition on Sexual Orientation

Community Relations Council

Community Technical Aid

Confederation of British Industry

Construction and Employers Federation

Courts and Tribunal Service

Disability Action

District Judge (Magistrates Court) – Laganside Courts

Equality Commission for NI

Equality Forum NI

Federation of Small Businesses

Food Standards Agency for Northern Ireland

Gingerbread

Help the Aged NI

HM Council of County Court Judges

HM Revenue & Customs

Human Rights Commission

Irish Bankers Federation

Law Centre (NI)

Law Society of Northern Ireland

Local Government Staff Commission (LGSC)

MENCAP

Men's Project

MEPs

Methodist Church in Ireland

Ministerial Advisory Group for Architecture and the Built Environment (the MAG)

Ministry of Defence

MLAs

MPs

National Association of Councillors (NAC)

NI Assembly / Committee for the Environment

NI Association of Citizens Advice Bureaux

NI Audit Office

NIACRO

NI Chamber of Commerce and Industry

NI Chamber of Trade

NI Committee – Irish Congress of Trade Unions (NIC/ICTU)

NI Council for Voluntary Action

NI Gay Rights Association (NIGRA)

NI Political Parties

NIPSA

North South Ministerial Council – NI Secretariat

North West Region Waste Management Group (NWRWMG)

Northern Ireland Court Service

Northern Ireland Judicial Appointments Commission (NIJAC)

Northern Ireland Law Commission

Northern Ireland Local Government Association (NILGA)

Northern Ireland Local Government Officers' Superannuation Committee

NI Ombudsman

Participation and the Practice of Rights Project

Public Service Commission (PSC)

Presbyterian Church in Ireland

QUB – School of Law

RSPB

RNIB

RNID

Save the Children

School of Law

Secretary – Catholic Bishops of Northern Ireland

Section 75 Groups

Society of Local Authority Chief Executives (SOLACE)

Staff Commission for Education & Library Boards

SWaMP2008

The Executive Council of the Inn of Court Northern Ireland

The General Consumer Council for Northern Ireland

The Law Society of Northern Ireland

The Northern Ireland Council for Ethnic Minorities

The Rainbow Project

Ulster Farmers Union

UU – School of Law

Victims Groups and Individuals

Women's Forum

Women's Support Network

Youth Council for Northern Ireland

Youthnet

