

HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

INTRODUCTION

This Code of Conduct (the Code) applies to every elected member and co-opted member¹ of Hart District Council. As a Councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

The Code does not apply to the actions of the authority as a whole, nor to the conduct of its officers and employees. It also does not cover matters under the Localism Act 2011 where criminal sanctions apply.

The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. Councillors hold public office under the law and must observe the rules of conduct stemming from the law, this Code, and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review regularly, at least annually, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code.

A very clear line, however, must be drawn between this Code's requirements of respect for others, including those with opposing views, and the freedom to disagree with the views and opinion of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other. Nothing within this Code seeks to stifle free speech.²

¹ Co-opted member is a person who is not an elected Member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee

² Councillors will not be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. European Convention on Human Rights (ECHR) Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, considering the increased protection given to political expression (see Advice Note attached)

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KEY PRINCIPLES OF THE CODE OF CONDUCT

The following general principles³ upon which this Code of Conduct is based should be used for guidance and interpretation only. They define the standards that members should uphold and serve as a reminder of the purposes of the Code of Conduct. These principles and the Advice Notes at the end of the Code accompany, but do not form part of, the Code of Conduct itself. However, a failure to act in accordance with these general principles may in itself amount to a breach of the Code of Conduct.

Duty - You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

Selflessness - You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

Objectivity - In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

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

Openness - 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 and integrity - You must be truthful and you must not place yourself in situations where your honesty and integrity may be questioned. You must not behave improperly and must on all occasions avoid the appearance of such behaviour.

Leadership - You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

Respect - You must respect all other councillors and all Council employees and the role they play. Similarly, you must respect members of the public when performing duties as a Councillor.

³ Article 28 of the Localism Act 2011.

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GENERAL PRINCIPLES

The rules of good conduct apply in all situations where you act, claim to act, or give the impression or reasonable perception that you are acting as a member or representative of Hart District Council^{4,5}.

You may also act as a representative of the Council on another body, for example where you have been appointed by the Council to an outside body. When acting for that other body, you must comply with the Hart Code of Conduct, unless it conflicts with lawful obligations of the other body.

1. You must treat others with respect

You should follow the principles of mutual respect in all your dealings and be prepared to accept that others may have equally strong views in good faith that differ from your own.

You should always treat colleagues with respect and not engage in any behaviour towards other members or staff which might reasonably be interpreted as discriminatory, bullying or harassment.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate and does not in itself amount to bullying or failing to treat someone with respect.

You must be careful not to act in a way which may amount to any of the prohibited form of discrimination or do anything that hinders the Council's fulfillment of its positive duties under equality laws. Such conduct may cause the Council to breach the law, and you may find yourself subject to complaint that you have breached the Code of Conduct.

It is not disrespectful to question political opinions or to have a different point of view to somebody. It is disrespectful however, to use offensive language or to accuse them

of dishonesty, wrongdoing or incompetence without producing any specific evidence, thereby seeking to damage their reputation.

While of course it is legitimate for you to express concern about the way in which a service is run or policy is being implemented by officers, you should avoid undermining, or making detrimental remarks about, individual named officers at meetings, or in any public forum, including on social media. This would be damaging both to effective working relationships and to the public respect for the Council. It is also unfair as in general, staff are unable to defend themselves against criticism in a public forum.

Chairman of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

2. Do not bully, harass or intimidate another person

Bullying is offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health. Harassment is repeated behaviour which upsets or annoys people. Intimidation is another form of bullying. It is the act of frightening someone into doing something that they do not otherwise want to do. This usually involves threats that make the person who is subjected to intimidation feel threatened or afraid.

Bullying, harassment and intimidatory conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of any of their colleagues, through the press or social media. It may happen once or be part of a pattern of behaviours, although minor isolated incidents are unlikely to be considered bullying or harassment.

⁴ If you identify yourself or make comments that are clearly related to your role as a councillor, then the Code will apply. This applies in conversation, in writing, or in your use of social media, even if you post a disclaimer that suggests your comments are not official posts (see Advice Note).

⁵ The Code does not apply if there is no suggestion that you are acting as a councillor. Councillors are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of the Council

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3. Do not compromise the impartiality of anyone who works for, or on behalf of, the Council

You should not approach or pressure anyone who works for, or on behalf of, the Council to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Do not disclose confidential information and you must always comply with data protection principles

There will be times when you will be required to treat discussions, documents or other information relating to or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

Legislation also gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out your Council duties. Such information is, however, for your use as a councillor and must not be disclosed or in any way used for personal or party-political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

Personal data is confidential and is protected by the *General Data Protection Regulations* (GDPR). Never share information with family or friends or allow access to personal data disclosed to you in your role as a Councillor.

When conducting Council business, you must only use the email account provided by the Council. **Personal email addresses that you may have should never be used.**

5. Do not prevent anyone getting information that they are entitled to by law

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the *Freedom of Information Act* or the *Environment Information Regulations*.

6. Do not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.

7. Do not misuse Council resources

You should never use the Council's resources or facilities for your own private or business purposes. It is also not appropriate to use, or authorise others to use, the Council's facilities or resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the *Local Government Act (1986)* or similar Act.

8. Do have regard to advice from the Monitoring Officer or S151 Chief Finance Officer

If you seek advice, or advice is offered to you, for example, on whether or not you should register an interest, you should have regard to this advice before you make your mind up.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

Where you disagree with officer recommendations in making a decision, you will need to take particular care in giving clear reasons for the decision.

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INTERESTS

A failure to comply with the following provisions does not amount to a breach of the Code of Conduct but may result in a criminal offence being committed.

General Principles

The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at all meetings that you attend and that your attendance, even as an observer, does not give rise to any suggestion that your presence could influence the outcome of the meeting. The rules which require registration of interests, along with the rules on declaration of interest, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

Mandatory Registration of Disclosable Pecuniary Interests

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property). They are called "Disclosable Pecuniary Interests" (DPIs)

Regulations made by the Secretary of State describe the detail and timescale for registering DPIs.

You have a DPI if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see Annex 1 attached).

You must, within **28 days of taking office**, notify the Monitoring Officer of any DPI where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

You must also, within **28 days of becoming aware of any new DPI**, or change thereto, notify the Monitoring Officer of such new or changed interest.

It is your personal responsibility to comply with these regulations, and you should review regularly and at least once a year your personal circumstances to ensure that your registration of interests is up to date.

Criminal Sanctions

It is a criminal offence if, without a reasonable excuse, you fail to tell the Monitoring Officer about your DPIs.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of the Council where that business involves a DPI.

Gifts and Hospitality

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

You must never ask for gifts or hospitality.

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

- isolated gifts of a trivial character, the value of which must not exceed £25
- normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- civic gifts received on behalf of the Council.

The receipt of these gifts must be registered with the Council within 28 days. This includes a requirement to disclose the name of the person who is believed to be the source of the gift or hospitality.

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

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

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

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

OTHER MATTERS

The following do not in themselves comprise part of the Code of Conduct. However, you should be aware that a failure to act in accordance with the advice as set out below will be taken into account in any allegation that there has been a breach of the Code of Conduct.

Conduct at Meetings

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

Recording, photography and use of social media at meetings

You need to consider your role at meetings and ensure that nothing distracts or stops you from making good and effective decisions. You may record proceedings in the same way as members of the public, but

if you film/record a meeting from a position that is not otherwise available to the public, you must make sure that it:

- is not disruptive, overly intrusive, or impeding good decision making
- does not hinder or prejudice Officers and fellow Councillors from carrying out their duties or participating in the meeting.

As a registered Data Controller, you must also comply with, and demonstrate compliance with, all the data protection principles as well as the other General Data Protection Regulation (GDPR) requirements. In addition, when filming or recording a meeting, you too must comply with any Hart Safeguarding, or corporate Equality Policy and Objectives, as well as the Freedom of Information Act.

Remuneration, Allowances and Expenses

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

Appointments to Partner Organisations

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

If you become a director of a company as a nominee of the Council, you will assume personal responsibilities under the Companies Acts. A conflict of interest may arise for you between the company and the Council. In such cases, it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest. The same applies if you assume other responsibilities such as becoming a director of a charitable trust.

Dealings with the Council

You will inevitably have dealings on a personal level with the Council of which you

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

Responsibilities to the Council as a Member of the Public

The law makes specific provision that if a councillor is in **two months** arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues.

If you owe a debt to the Council, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision that may create suspicion of a conflict of interest.

Communications

You must be clear when communicating with the media or speaking in public, and particularly if you are using social media, that you do not give the impression you are acting in an official capacity when you are acting in a personal capacity.

Since the judgment of whether you are perceived to be acting as a councillor will be taken by someone else, it is safest to assume that any online activity can be linked to your official role.

Training

You must attend mandatory training provided by the Council and receive, attend and consider updates when required.

DECLARATIONS OF INTERESTS

It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in

the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor about a particular matter. You can, of course, seek advice from the Monitoring Officer. In making decisions for which you are personally responsible, you are advised to err on the side of caution.

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

You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing the Council.

Declaration of a DPI at a meeting of the Council

Your obligation to disclose a DPI to a meeting applies when you are aware of or ought to be aware of the existence of the DPI.

If you are present in any capacity (and this includes a private capacity) at a meeting of the Council, its executive (Cabinet), or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of the Council, and you have a DPI relating to any business that is or will be considered at the meeting, **you must declare that interest and you must not participate in:**

- any discussion of the business at the meeting, or if you become aware of your disclosable DPI during the meeting participate further in any discussion of the business, or
- any vote or further vote taken on the matter at the meeting.

If the interest is not registered, you must still disclose the interest to the meeting. If the interest is not registered and is not the subject of a pending notification, you must

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notify the Monitoring Officer of the interest within 28 days.

These prohibitions apply to any form of participation including speaking (or even observing the meeting) as a member of the public. **You must leave the room.** You cannot remain in the public gallery even if only to observe any discussion or vote on the matter.

In certain circumstances, you can request from the Monitoring Officer a dispensation from these prohibitions.

Dispensations which do not amount to DPIs

You do not have a DPI in the following circumstances:

1. Setting of Council Tax or precept or local arrangements for council tax support;
2. Housing: where you (or your spouse or partner) hold a tenancy or lease with the Council as long as the matter does not relate to your particular tenancy or lease;
3. Housing Benefit: where you (or your spouse or partner) directly receive housing benefit in relation to your own circumstances; or
4. An allowance, travelling expense, payment, or indemnity for Councillors.

Declaration of "Other" Interests

Sometimes you may have "other" interests in a matter if that matter affects the well-being of you, members of your family, or people with whom you have a close association, more than it would affect most people in the ward affected by the decision, or in the Council's area.

An "other" interest can affect you, your family or close personal associates positively and negatively. Therefore, if you or they have the potential to gain or lose from a matter under consideration, a personal interest may need to be declared in both situations.

Your obligation to disclose an "other" interest to a meeting only applies when you are aware of or ought to be aware of the existence of the personal interest. Providing that the "other" interest does not amount to a "prejudicial" interest, you can

remain in the room, participate in any discussion, and vote on the business at the meeting.

What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a "prejudicial" interest.

The mere existence of local knowledge or connections within the local community, however, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

What you should do if you have a "prejudicial" interest

If you have a "prejudicial" interest in a matter being discussed at a meeting, even if you are only attending to observe the meeting from the public gallery, you must declare that you have a prejudicial interest and the nature of that interest as soon as that interest becomes apparent to you **and you must leave the room immediately. You cannot stay in the room or the public gallery.**

This Code of Conduct, however, aims in certain circumstances to still provide you with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you will be provided with the same opportunity. You will be able to make representations, answer questions, or give evidence, even if you have a prejudicial interest in the item. **You may not however, take part in the discussion.**

You must **immediately leave after** you have made your representations, given evidence, or answered questions, and before any debate starts.

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If the meeting decides that you should finish speaking, despite your intention to say more, you must comply with the meeting's decision. Although members of the public may be allowed to observe the discussion and vote on the matter, **you are not allowed to do so and must leave the room immediately**. Failure to do so may be viewed as an attempt to **improperly influence** the meeting.

Bias/Predetermination

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct but you still need to make clear that you are not biased or predetermined going into the decision making process.

Even though you may have been scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact.

You are entitled to have a **predisposition** one way or another as long as you have not pre-determined the outcome. In essence, you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you might take. You are able to express an opinion providing that you can show that you have come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day.

However, there is still a need for anyone proposing to participate in decisions to examine their position with scrupulous care. This should be in the light of how proposed involvement is likely to be seen by critical external observers ("the objective test").

Dual-Hatted Members

Membership of another public body gives rise to a personal interest where you are involved in discussions or decisions relating to that other public body.

You should be able however, to regard most interests arising out of membership of another public authority as being personal non-prejudicial interests, even where there

are financial implications. Examples of the sort of situation where the interest may become prejudicial, and will therefore rule you out of participation in any discussions and decision-making, are:

- a) Consideration of a licensing or planning application submitted by the other authority of which you are a member;
- b) A discussion or decision where two public authorities are in dispute and where litigation is threatened or has been commenced;
- c) Where the financial implications are so significant that one authority would have to reconsider its budget.

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ANNEX 1

DISCLOSABLE PECUNIARY INTERESTS

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011. Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 **and** it is either the interest of yourself; **or** your partner (which means spouse or civil partner; a person with whom you are living as husband or wife; or a person with whom you are living as if you are civil partners) within the following descriptions:

(In the extracts from the Regulations below, 'M' means you and the 'relevant person' means you and your partner, as above)

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and Hart District Council - <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.
Land	Any beneficial interest in land that is within the area of Hart District Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Hart District Council for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) - <ul style="list-style-type: none"> • the landlord is Hart District Council; and • the tenant is a body in which the relevant person has a beneficial interest.

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Securities	<p>Any beneficial interest in securities of a body where -</p> <ul style="list-style-type: none"> • that body (to M's knowledge) has a place of business or land in the area of Hart District Council; and <p>either -</p> <ul style="list-style-type: none"> • the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or • 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 of the total issued share capital of that class.
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These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of Hart District Council;

“member” includes a co-opted member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

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ANNEX 2

ADVICE NOTE: Article 10 of the European Convention on Human Rights

This Advice Note relates to the application of Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of expression. It also suggests issues councillors should consider to ensure compliance with the provisions in the Codes of Conduct.

Article 10 is a qualified right and, as such, the right to freedom of expression may be limited by a restriction such as the imposition of a sanction for a breach of a Code of Conduct. However, any restriction on freedom of expression needs to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued.

Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

Politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”⁶.

You should, therefore, consider both what you are expressing and the way you are expressing it. You should be able to undertake a scrutiny role, represent the public and any constituents, or make a political point in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and/or unduly disruptive.

The following points below summarise some of the principles established by the Courts, in respect of the application of Article 10.

- (i) Enhanced protection of freedom of expression applies to all levels of politics including local.
- (ii) There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.
- (iii) Political expression is a broad concept. There is little distinction between political discussion and discussion of matters of public concern.
- (iv) In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
- (v) The right to freedom of expression is not, however, absolute. Restrictions may be imposed to ensure that the conduct of public life, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.
- (vi) It may be necessary, for example, to protect officers from offensive and abusive verbal attacks. It is in the public interest that officers are not subjected to unwarranted comments that prevented them from performing their duties in conditions free from disturbance.
- (vii) Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians.

⁶ Done without good reason, unjustified

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- (viii) Public interest in particular information can sometimes be as strong as to override even a legally imposed duty of confidence. In determining whether a restriction is legitimate, however, consideration should be given to whether or not there were sufficient other opportunities for the individual imparting the information to achieve his or her objective.
- (ix) Any restriction on freedom of expression needs, however, to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued (i.e. is there any other way of achieving the restriction's objective).
- (x) The less bad or shocking the conduct, the more difficult it is to justify any restriction on freedom of expression.
- (xi) Communications protected by Article 10 are not limited to speech. They include communications of any kind such as spoken or written words (including social media); pictures, dress, graffiti, acts of protest, even wearing a beard. They include opinion or speculation even if not objectively true. They must, however, be made in a public way.
- (xii) Hate speech is not protected. This includes any expressions of hatred toward someone on account of that person's colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

ADVICE NOTE: Use of Social media

The continued rise of social media and blogging presents a new way for counsellors to engage with their residents. These platforms can be useful for informing residents about local issues and the actions that their elected representatives are taking. It can raise profiles and potentially help to engage a wider audience in local politics. However, it brings additional risks for councillors around the way in which they express themselves.

Social media and blogging are much faster than traditional methods of communication, and users are often anonymous. This can create a tendency towards knee-jerk reactions and responses and intemperate exchanges. Whilst the protection of Article 10 of the European Convention on Human Rights remains, councillors must be particularly careful in the way they communicate where there is any suggestion that they are using these tools in an official rather than private capacity. Comments on blogs, forums or social media are more likely to be viewed as having been made in an official capacity where the author is explicitly identified themselves as councillors, where they impart information which is known to them only by virtue of their elected position, or where they comment directly on council business rather than on wider political issues. Use of disclaimers on blogs and social media does not necessarily mean that what is said falls outside the scope of the Code.

Care also need to be taken where members of the public are able to make comments on what councillors have written since there may be a risk that these would become associated with the councillor if they are not removed.