

September 2004



# Lobby groups, dual-hatted members and the Code of Conduct Guidance for members

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Confidence in local democracy

## This guide

This guide is for members of:

- district, unitary, metropolitan, county and London borough councils;
  - parish and town councils;
  - English and Welsh police authorities;
  - fire authorities (including fire and civil defence authorities);
  - the London Fire and Emergency Planning Authority;
  - passenger transport authorities;
  - the Broads Authority;
  - national park authorities;
  - the Greater London Authority;
  - the Common Council of the City of London;
  - the Council of the Isles of Scilly.
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## Introduction

In the guidance *How do I register and declare interests and register gifts and hospitality?* we outlined your general responsibilities to register and declare interests that might affect the performance of your duties as a member. But for members of lobby groups and members who sit on more than one relevant authority and other public bodies (dual-hatted members), deciding whether you have an interest, and whether that interest is personal or prejudicial, can sometimes be difficult. It can also be difficult to know when to rely on paragraph 10(2) of the Code of Conduct (paragraph 9(2) for parish councils) to allow you to participate in meetings.

This guide will help you decide how to act in these circumstances. It's in three parts:

- **Membership of lobby groups**

Practical advice and examples to help you understand when membership of a lobby or campaign group may give rise to personal and prejudicial interests, and other important principles and legal requirements to consider when you are making decisions.

- **Dual-hatted members and paragraph 10(2)**

Explains the interests that can arise from service on other authorities and public bodies, and provides practical advice and examples to help you decide when to rely on the paragraph to participate in meetings.

- **If you have a prejudicial interest**

Advice on what you can do if you have a prejudicial interest.

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## Membership of lobby groups

As a member of your authority, you are at the heart of local democracy, making a difference in people's daily lives. You represent people in your area and take forward concerns of individuals, neighbourhoods and interest groups, drive change, participate in community and action groups, and make decisions for the benefit of the community as a whole.

Sometimes, these roles and responsibilities conflict, and you need to strike a balance between representation, driving change and ensuring the authority can even-handedly decide matters on their merits — and be seen to be doing so.

Remember that the Model Code of Conduct is not the only thing you need to consider: it does not change the legal principles that apply to decision-making in your authority. You must also act in accordance with the General Principles which underpin the Code of Conduct. So, for example, you should not place yourself in situations where your honesty and integrity may be questioned, and you must reach your own conclusions on the issues before you. The law requires you to take decisions fairly, on the merits known to you at the time you make the decision. You should not reach a final conclusion before you come to take a decision on an issue.

This guidance only covers interests and issues that arise from your membership of a lobby or campaign group. As with any matter, you must also consider whether or not you have a personal or prejudicial interest in the issue due to personal circumstances. For example, it may affect your house or job, or those of your family and friends.

## Principles

When you are considering what interests arise from your membership of a lobby or campaign group, you should keep in mind the General Principles that underpin the Code of Conduct, set out in the *Relevant Authorities (General Principles) Order 2001*.

The first General Principle states that members should "serve only the public interest". It would be wholly unreasonable to expect you to be devoid of general views about a range of local issues. In fact, you may

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well have been elected because of your views on those issues. The Standards Board for England believes that it would not serve the public interest for people with strong views on local issues to be discouraged from involvement in local government.

However, you also need to consider other principles:

- the second General Principle states: "members should not place themselves in situations where their honesty or integrity may be questioned";
- the third General Principle states: "members should make decisions on merit";
- the sixth General Principle states: "members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions".

Your statements and activities should not create the impression that your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision. Public confidence in the probity of decision making is paramount.

### **Personal interests arising from membership of lobby groups**

Membership of lobby and campaign groups should be included on your register of interests, as these are bodies "whose principle purposes include the influence of public opinion or policy". The Code of Conduct requires you to declare a personal interest in any matter that relates to an interest you must include in your register of interests. So you are required to declare a personal interest if you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority.

You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions. You can continue to participate unless the interest is also prejudicial.

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Even if your lobby group does not keep a formal membership list, the Code of Conduct still applies to you in the same way. If you are acting as a member — perhaps attending meetings or participating in group activities — you should still register your membership of the group and declare interests following the guidance in this booklet.

### **Prejudicial interests arising from membership of lobby groups**

Under the Code of Conduct, you only have to withdraw from an item in a meeting in which you have a personal interest, if that interest is also prejudicial — that is, if the issue is so significant that a member of the public with knowledge of the relevant facts would reasonably think that your judgment of the public interest is likely to be prejudiced. As always, each case depends on its merits. You should consider the points outlined below in each case, to help you decide whether or not your personal interest is also prejudicial.

If you have a prejudicial interest in a matter, you should declare the existence and nature of the interest and withdraw from the meeting before the matter is discussed. You should not attempt to influence improperly the discussion or decision.

#### **Direct impact on lobby and campaign groups**

If the matter to be discussed will have a direct impact on a lobby or campaign group you belong to, you are likely to have a prejudicial interest. This includes anything that directly affects the rights and obligations of a group to which you belong.

For instance, if, during your council work, you discuss whether to grant funding to your lobby group, or to approve a planning application submitted by the group, you would normally have a prejudicial interest. You should never take part in discussions of this nature.

#### **Indirect impact on lobby and campaign groups**

Matters that relate to the things a group campaigns on or has expressed public opinions about, without affecting the operation of the group directly, have an indirect impact on that group. If the matter to be discussed relates

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indirectly to a lobby or campaign group you belong to, you may have a personal or prejudicial interest in it.

To determine if you have a prejudicial interest in a matter of indirect impact, consider the following factors:

- the nature of the matter to be discussed;
- the nature of your involvement with the lobby or campaign group;
- the publicly expressed views of the lobby or campaign group;
- what you have said or done in relation to the particular issue.

You must weigh up all these factors in relation to the specific matter being discussed and consider whether a reasonable member of the public who knows the relevant facts would think it likely that your judgment of the public interest would be prejudiced. These factors are explained in more detail below.

### Factors to consider

The more focused your group is on a particular issue, the more involved and active you have been, and the more committed you appear to a particular outcome, the more likely it is that your interest will be prejudicial. The test is not whether your approach to a particular issue will be affected by an interest, but whether an informed member of the public would think there is a real possibility that you could be biased. In these circumstances, always seek advice from your monitoring officer or parish clerk.

The nature of the matter is one of the most important factors to consider, and one to which The Standards Board for England gives particular weight. In our view, a reasonable member of the public who knows the relevant facts will appreciate that those involved in local government are likely to have strong views on a range of issues, based on their experiences and political outlook. These views may have been reflected in the member's election manifesto; even members with no political affiliation may have sought election on the basis of their views on matters of local controversy. Therefore, members will tend to have an opinion on many matters that arise, and these opinions may be reflected in membership of particular campaign or lobby groups.

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The Standards Board for England believes that, in many cases, opinions of this kind may not amount to a prejudicial interest, even if you belong to a campaign or lobby group. Campaigning about a particular issue does not, in our view, indicate a possibility that you will not fairly consider the evidence and arguments presented. Simply approaching the issue from a particular point of view does not make an interest prejudicial. This is particularly relevant to budget issues and matters of broad policy, such as setting key priorities in fields like education, transport and social services. In our view, it is highly unlikely that campaigning on issues of this kind will amount to a prejudicial interest.

You may need to consider discussions on policy decisions and implementation more carefully. Here, specific decisions are being made about specific places, individuals and organisations. The Code of Conduct is not intended to prevent you from campaigning on issues like these, but it is possible that you could identify yourself so closely with a particular outcome that an informed member of the public would reasonably think your judgment was prejudiced.

Regulatory matters, such as planning and licensing, are particularly sensitive. For instance, if you are considering planning applications, you must follow a formal administrative process involving rules of procedure and rights of appeal, and you are expected to act reasonably and fairly when making your decisions. In both planning and licensing matters, the public is entitled to make applications and have them determined in accordance with the law. Often, individual rights under the *European Convention on Human Rights* are involved.

In our view, you should adopt a particularly cautious approach to planning and licensing matters. Membership of a group that campaigns for or against a particular planning or licensing application may well constitute a prejudicial interest. You should avoid committing yourself on any matter that may fall to be decided by you as a member of a planning or licensing committee.

Different considerations apply when an authority is consulted for its views on a matter in which it does not have the power to take a final decision.

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A reasonable and informed member of the public would accept that campaigners should be able to participate in consultation, even in consultation on planning and licensing matters. In these cases, you should declare a personal, but not prejudicial, interest, even if you have campaigned heavily on the issue.

### **Executive members**

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. It makes no difference if your interests arise through your involvement in a lobby or campaign group. So if your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions, providing you declare your interest. You can also exercise delegated powers in the matter.

If you have a prejudicial interest in a matter, you are barred from discussions and decision-making about that matter in cabinet. You also should not participate in any early consideration of, or exercise any delegated powers in, that matter. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence. However, you can still be called to give evidence on the matter to an overview and scrutiny committee.

### **Examples of indirect impact on lobby groups**

These are hypothetical examples to help illustrate our general views. In a real situation, you must be careful to consider all the relevant circumstances on their merits, and seek the advice of your monitoring officer or parish clerk if you are in any doubt. He or she can provide specific advice about your situation, help you decide if you have an interest, and whether that interest is personal or prejudicial.

If you were a senior member of a **national research and lobby group** which made strong representations to your council about the council's transport plan, you would have a personal interest in any discussions

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involving that transport plan. However, that interest would not be prejudicial.

If you were an annual member of **English Heritage**, you would have a personal interest when determining an application for listed building status if English Heritage had expressed support for the application. However, that interest would not be prejudicial unless other factors were involved. If English Heritage had not expressed a view on the application, you would not have a personal or prejudicial interest.

If you were a leading and active campaigner in the **Coalition of Developers Against a National Park**, you would have a personal interest when considering a government consultation paper on a proposal for a new national park in your authority's area. However, this interest would not be prejudicial.

If you were a leading campaigner in the **Expand Our Leisure Centre** campaign, you would have a personal interest when discussing your authority's capital plan if it involved some change to the leisure facilities in your authority's area. However, as this project is only one part of the plan, you would not have a prejudicial interest in the whole discussion and decision on the plan. Clearly, if you were part of the committee discussing whether to expand that individual leisure centre, you would have a prejudicial interest.

If you were the main public spokesperson for the **Save Our Primary School** action group, you would have a personal, and probably prejudicial, interest in any decision by the council about the future of the school. In this case, your very close association with the campaign group would be likely to be viewed as impairing your judgment of the public interest. If you were an ordinary member of the action group without any active role in the campaign, you would have a personal, but not prejudicial, interest.

If you were a vocal member of the **No More Incinerators** group, and sat on a planning committee to determine an application for a new incinerator, you would have a personal and prejudicial interest in the matter. Your participation might also be challenged on the grounds of predetermination — see the following section: 'Have I made up my mind about the issue?'.

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### **Have I made up my mind about the issue?**

This guidance reflects what should be current normal practice in local government when dealing with the impact of membership of lobby and campaign groups. The Model Code of Conduct has not introduced new restrictions.

As noted earlier, you should not reach a final conclusion on an issue before you come to take a decision on it. This doesn't mean you cannot form a view about the matter before the meeting, but if you have formed a provisional view, you must still be willing to consider all arguments presented at the meeting and be open to persuasion on the merits of the case. If you are not, your decision might be open to legal challenge because of the common law concept of predetermination. This is a legal concept that the courts have always applied to local authority decision-making. It predates the Code of Conduct and is not altered by it. In our view, the courts are the appropriate forum for determining if a decision is flawed because a member was not open to persuasion on the merits of the case.

For instance, if you made a particular issue a centrepiece of your election campaign, or were elected on the basis of a single-issue campaign, but are not a member of a related lobby group, you will not have a personal or prejudicial interest under the Code of Conduct. However, you still need to consider whether you are genuinely open to persuasion about the matter.

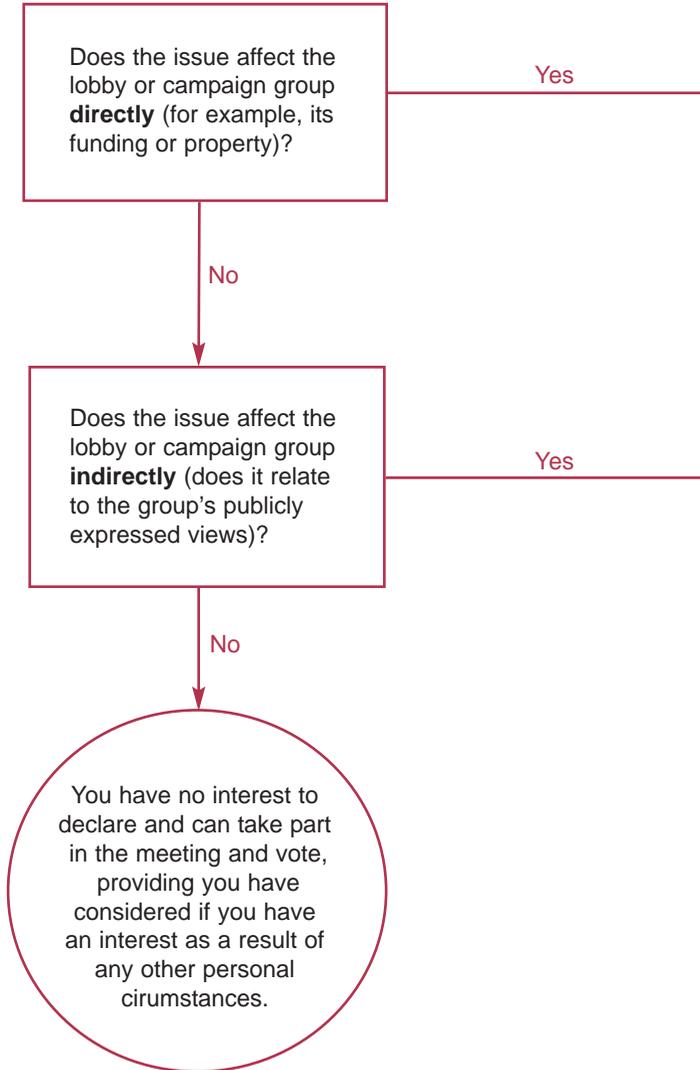
A member of the executive asked to draw up proposals for discussion at cabinet is entitled to form a preliminary view on the proposals. Such a preliminary view would not normally mean that you were closed to persuasion when the matter was discussed in detail at the cabinet.

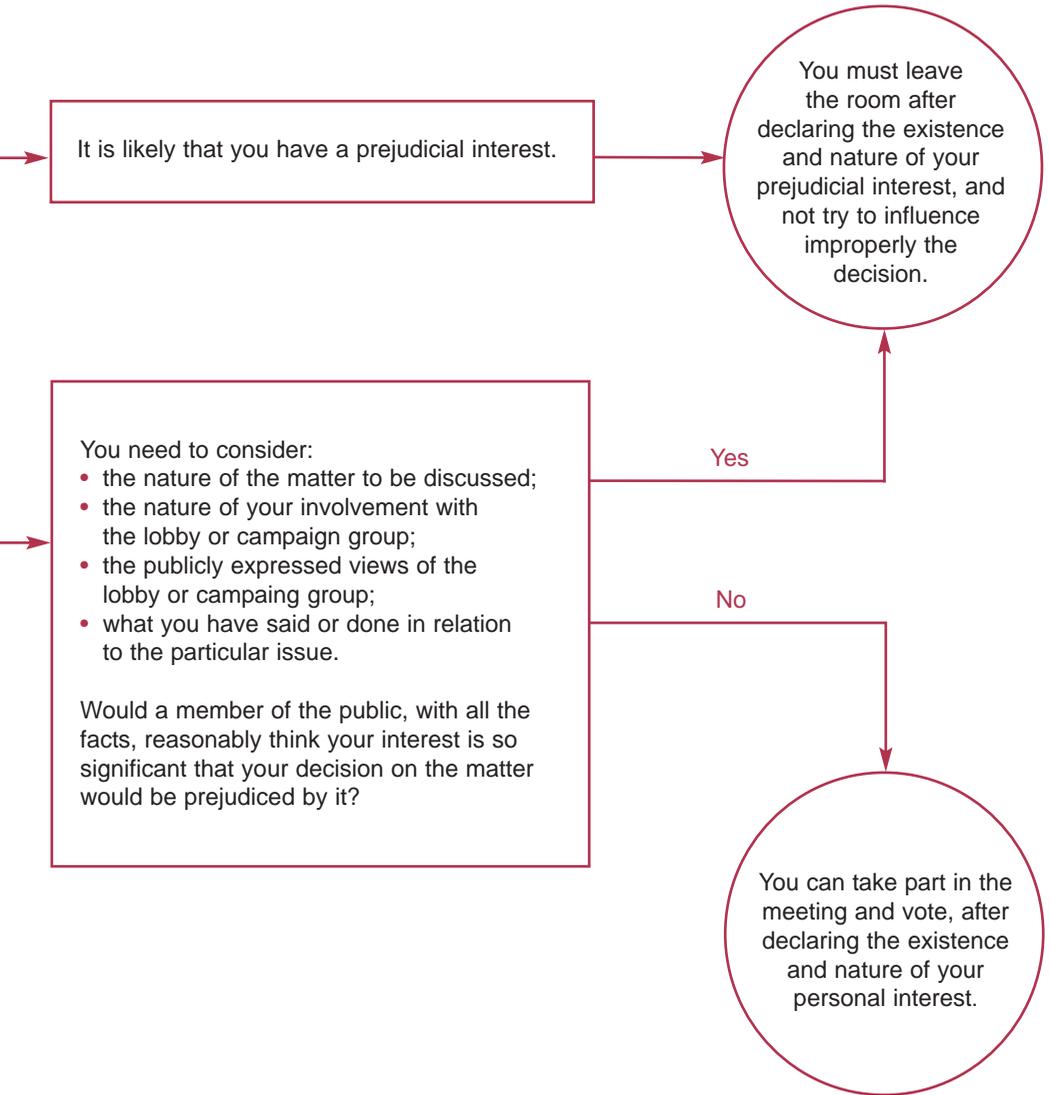
Publicly stating that you are open to persuasion may not be sufficient to prove you are not predetermined. You must genuinely be open to persuasion. Clearly a statement such as "This application will only get approval over my dead body," would be a strong indication that you are not open to persuasion on the merits of the case.

For further advice about the law on predetermination, contact your monitoring officer or parish clerk.

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## Declaring interests relating to lobby groups — questions to ask yourself





It is likely that you have a prejudicial interest.

You must leave the room after declaring the existence and nature of your prejudicial interest, and not try to influence improperly the decision.

You need to consider:

- the nature of the matter to be discussed;
- the nature of your involvement with the lobby or campaign group;
- the publicly expressed views of the lobby or campaign group;
- what you have said or done in relation to the particular issue.

Would a member of the public, with all the facts, reasonably think your interest is so significant that your decision on the matter would be prejudiced by it?

Yes

No

You can take part in the meeting and vote, after declaring the existence and nature of your personal interest.

## Dual-hatted members and paragraph 10(2)

Paragraph 10(2) deals with situations where members have interests arising from service on other authorities and public bodies — such as a governor on a school board or a trustee of a village hall — where the rules in relation to prejudicial interests might interfere with the proper conduct of authority business.

In the Model Code of Conduct for parish councils, it's actually paragraph 9(2), but the provisions are similar. In this guidance, where we refer to paragraph 10(2), we also mean 9(2) for parish councils.

This guidance provides our view on what the paragraph aims to achieve, and how you should consider your interests in the circumstances it describes. Ethical standards officers also apply these principles when investigating allegations about these kinds of interests.

Given the difficulty of this area, you should always seek the advice of your monitoring officer or parish clerk when considering these kinds of interests. He or she can provide specific advice about your situation, help you decide if you have an interest, and whether that interest is personal or prejudicial.

### **The aims of paragraph 10**

Paragraph 10 aims to balance three principles:

- that members must withdraw from consideration of issues where their interests conflict with their public duties;
  - that the rules on interests should not obstruct members who are involved in other forms of public service, such as another tier of local government;
  - that the rules on interests are not intended to interfere with the proper conduct of council business.
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Paragraph 10 of the Model Code of Conduct for local authorities states:

- 10.1 *Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.*
- 10.2 *A member may regard himself as not having a prejudicial interest in a matter if that matter relates to:*
- a. another relevant authority of which he is a member;*
  - b. another public authority in which he holds a position of general control or management;*
  - c. a body to which he has been appointed or nominated by the authority as its representative;*
  - d. the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;*
  - e. the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;*
  - f. the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and*
  - g. the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.*
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The provisions of sub-paragraphs 10(2)(d–g) differ slightly in all the Model Codes of Conduct, reflecting the varied powers and responsibilities of each authority, but they serve broadly the same function.

The provisions of sub-paragraphs 10(2)(d–g) apply to a specific set of situations that commonly arise during authority business, such as setting allowances for members of the authority. In these areas, it is clear that members will not have a prejudicial interest in related discussions and members should have no difficulty applying the provisions.

However, interpretation of sub-paragraphs 10(2)(a–c) can sometimes be difficult because they apply to a much broader set of situations, where members belong to outside bodies. Reliance on these sub-paragraphs requires greater care.

### **Understanding sub-paragraphs a–c**

This section of the Code of Conduct is intended to remind members that some interests arising from involvement in other forms of public service should not unduly restrict the activities of the members concerned.

If you have a personal interest in a matter as a result of your membership of one of these groups, you still need to consider whether that interest is prejudicial. You should apply the same test as for any interest: would a reasonable member of the public who knew all the relevant facts think that your interest was so strong that your judgment would be prejudiced?

Many interests that arise from service on other public bodies or as a representative of the authority will not be prejudicial. A reasonable member of the public will recognise that there is no objection, in principle, to an individual serving on a number of public bodies, and the fact that an issue may relate to membership of another such body will not necessarily indicate that the member's judgment of the public interest will be prejudiced.

However, in some cases a reasonable member of the public might consider that such an interest is prejudicial. These provisions do not exempt you from the rules governing prejudicial interests, so if your

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interest is prejudicial, you must withdraw from the room and not attempt improperly to influence the discussion.

## Dual-hatted members

### Considering a matter at more than one authority

The Code of Conduct does not automatically prevent you from considering the same issue at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 10(2)(a) to members of "another relevant authority" reinforces this point.

So, for example, if an issue comes up for discussion at both the parish and district level, and you sit on both authorities, you should:

- at the parish level, make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier;
- at the district level, declare a personal (but not prejudicial) interest arising from your membership of the parish council which has already expressed a view on the matter, and make it clear that the parish council's view does not bind you and that you are considering the matter afresh.

These guidelines apply even if a proposal has a direct impact on a particular location. For example, to continue the example of a parish and district councillor, there is no objection, in principle, to you speaking and voting on issues in the district council's development plan that particularly affect your parish. Of course, you must still consider if you have a prejudicial interest arising from the impact of the proposals on your well-being or financial position. In such circumstances, it would not be appropriate for you to rely on paragraph 10(2).

### Considering applications for decision, such as licensing and planning

In some situations, it is unrealistic to expect a member of the public to believe you would disregard the interests of another public body on which you serve. For example, you should not sit on decision-making bodies, such as planning and licensing committees, when they decide applications

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from an authority on which you also serve. Even though these situations fall within the scope of sub-paragraphs 10(2)(a) and (b), a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances.

Another common situation is a contract between the two authorities, such as a parish council renewing its lease on a building owned by a district council. In this case, a member of both bodies could not participate in negotiations over the lease renewal. He or she would clearly have a conflict between seeking the highest possible rent for the district council and the lowest rent for the parish council.

## **Members of outside bodies**

### **Discussing matters that relate to the body generally**

As with all interests, a member of the public with all the relevant facts is less likely to think that your judgment would be prejudiced if the matter you are discussing relates indirectly, or in a general way, to the group you belong to, or will otherwise not have a significant impact on that group. For instance, if you are a school governor, you will not have a prejudicial interest in setting broad education objectives and spending priorities for the council: clearly, these discussions relate to all schools. However, you are likely to have a prejudicial interest in matters that relate specifically to the school of which you are a governor, such as a decision on whether to close your school.

## **Members of outside bodies**

### **With an advisory role at council**

If you are a member of an outside group and a related issue comes up for discussion at your authority, but you are participating in an advisory capacity, in our view, you are likely to have few problems. For example, it would be entirely appropriate for a county councillor who was also a school governor to take part in an all-party committee advising the

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council's executive on a private finance initiative scheme affecting the member's school. The school governor's knowledge and experience of local schools would be invaluable to the work of the advisory committee. The fact that the county councillor was not a member of the decision-making body (the executive) means that there would be no question of improper decision-making.

Similarly, where the decision-making power has been delegated to an individual portfolio-holder, a member of the executive who was also governor of the school affected could properly take part in executive discussions, provided he or she was not the decision-taker on the particular issue.

### Members of parish community groups

It is common for parish councillors to be involved with other community bodies, such as a village hall management committee or its trustees. Sometimes, the parish council may nominate you to represent the council on one of these bodies. Overlapping responsibilities of this kind are a normal part of life in small communities, and these circumstances are covered by paragraph 9(2)(c) of the Code of Conduct for parish councils. In many circumstances, it will be appropriate for you to participate in council discussions and decisions relating to the relevant body. However, if there could be a genuine conflict between the interests of the parish council and the outside body on important matters of principle or the allocation of significant public funds, a member of the public would think that your close involvement in the body is likely to prejudice your judgment of the public interest.

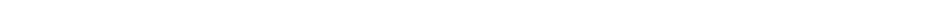
### Understanding parts d–g

The second part of paragraph 10(2) relates to interests that are likely to arise frequently in the course of authority business. In the Model Codes of Conduct for local authorities, fire and joint authorities, and national park and the Broads authorities, there are four sub-paragraphs (d–g); in the Model Codes of Conduct for parish councils and police authorities, there are only two — (d) and (e).

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You do not need to declare a prejudicial interest in situations covered by these parts of the Code of Conduct, but you should still declare a personal interest. The rules on prejudicial interests are not intended to interfere with the proper conduct of council business, and these sub-paragraphs help to ensure that they don't.

For instance, one of the sub-paragraphs enables members to set the level of certain allowances that it defines. Similarly, if you are a local authority tenant, you are allowed to discuss matters relating to the housing functions of your authority, provided that you do not have rent arrears of more than two months and the matters under discussion do not relate to your tenancy. In each case, you should still declare a personal interest, but you can remain and participate in the meeting.



## If you have a prejudicial interest

If you have a prejudicial interest in a matter to be discussed, you must leave the room and not seek to influence improperly the decision. Faced with this situation, there are a number of things you can do instead, and some additional things that you cannot do.

### What you can do

As a councillor or member of another authority, your status means that you give up certain rights that other members of the public may exercise, such as the right to speak about your own planning applications. However, you can still present your views to the meeting through some other means that do not involve improperly influencing the decision:

- you can make written representations, providing you disclose the existence and nature of your interest and do not seek preferential consideration for your representations. Such written representations in a private capacity can be made to officers involved, but not to individual members;
- in the case of planning applications, you can use a professional representative to make an application on your behalf, avoiding any appearance of impropriety;
- if constituents from your area have views about a matter in which you have a prejudicial interest, you could arrange for another member of the authority to present those views. You should formally advise your constituents about your interest and inform them that the other member will represent their views on the issue. When representing the views of your constituents, the other member should make it clear to the committee or officers that he or she is acting in your place because you have a prejudicial interest in the matter.

### What you cannot do

- You cannot be present in the public gallery or speak as a member of the public, even during separate public discussion sessions.
  - You should not make written representations to members of the relevant committee (you should submit them only to the relevant officers).
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- To prevent any appearance of improper influence, you should avoid discussing the matter with any member of the authority, even to ask a ward councillor to present your views in your absence (but you are permitted to approach other members to represent the views of your constituents).
  - You should certainly not attempt to lobby committee members about the matter, before or after a meeting, attempt to use your status as a member to influence consideration of a submission, or try to get officers to change a decision or recommendation.
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Confidence in local democracy