



**GUIDANCE ON THE
MODEL CODE OF CONDUCT
for
MEMBERS of DEVOLVED PUBLIC BODIES**

I N T E G R I T Y I N P U B L I C L I F E

Standards matter: A review of best practice in promoting good behaviour in public life. Extracts from the 2013 report by the Committee on Standards in Public Life

“Codes do not have an impact simply by existing. Principles and rules are necessary but not sufficient to create high standards. Organisations also need the right culture, effective monitoring and strong leadership.”

“Many of the requirements for high standards require action at organisational level. But high standards also require individuals to take personal responsibility – by observing high standards themselves, by demonstrating high standards to others through their own behaviour and by challenging inadequate standards when they see them. Mindlessly following rules and processes is not enough if people do not also engage their judgement about what is important. An individual who has internalised sound ethical principles and the reasons they are important is better able to make appropriate decisions than someone simply following a set of rules”

“Practice what you preach – hypocrisy is very damaging to trust.

Introduction

The public rightly expects exemplary standards of behaviour from those serving on the boards of public bodies when undertaking their duties. It is your personal responsibility to comply with the requirements of the Model Code of Conduct as adopted by your public body and your actions should be part and parcel of winning the public's respect and trust in the work you do.

There is a statutory framework governing behaviour in public life, comprising:

- Codes of Conduct which members of devolved public bodies must comply with when carrying out their duties;
- A set of arrangements for dealing with complaints that a member of a public body has acted inappropriately and has contravened the Code of Conduct.

Each public body has a Code of Conduct, based on the Model Code, and each will also have its own internal policies which apply the Code in the context of the body's work.

It is essential to note that as a member of a public body
it is your personal responsibility
to make sure you are familiar with the Code of Conduct and internal policies for your public body
and that your actions accord with these.

In other words, simply ticking boxes is not enough; you have to understand the reasons behind good ethical behaviour and apply these thoughtfully on a case by case basis.

This note offers a brief guide on what the Code means for you as a Member of a public body but it is not a substitute for the Code itself, which contains more detail. As a Board Member you must read and abide by the Code.



Section 2: Key principles of the Model Code of Conduct

Exemplary standards of behaviour mean behaving and, importantly, being seen to behave in accordance with nine key principles of public life which you as a Board Member are expected to uphold in carrying your duties. More detail about each principle is provided in the Code. In brief they are:

- Duty
- Selflessness
- Integrity
- Objectivity
- Accountability and Stewardship
- Openness
- Honesty
- Leadership
- Respect

The Code of Conduct is there to help you interpret and to apply these principles. However it is your responsibility to do the thinking and make sure you are meeting the provisions of the Code. In working through this process you may need to exercise your judgement. Sometimes making that judgement is difficult but there are two crucial points: you must exercise it objectively; and

you should bear in mind that perception by informed members of the general public, who know the facts, is an important factor.

This is not the same thing as members of the public not *liking* a decision made or opinion expressed legitimately in the course of your work; it is more about whether you have acted properly.

The Code of Conduct applies to your actions as a member of a public body. However, bear in mind that opinions you express in a personal capacity will attach to you in all your walks of life. It is very difficult to persuade people that you can take a different view, or even have an open mind, in your capacity as a Member of a Devolved Public Body from a view you may have expressed in your personal capacity. This is particularly pertinent in respect of using social media where the separation of public and private comments can be very unclear to someone reading them.

If you need advice, the following sources may help:

- The Code of Conduct;
- Your public body's Standards Officer;
- Your public body's own internal policies (e.g. on use of facilities; gifts; etc.);
- The "On Board" manual published by the Scottish Government.
- Information published on the websites of the Standards Commission for Scotland and the Commissioner for Ethical Standards

You should always think ahead. If you have any concerns about a possible problem, speak to your Standards Officer, Chief Executive or Chair so that action can be taken before a situation becomes a serious problem or a complaint is made against you.

The following information provides a brief guide to the sections in the Code of Conduct – for more details about each section it is important to read the Code of Conduct:



Section 3: General Conduct

You must treat everyone you come into contact with in the course of your work for your public body with courtesy and respect, even if you disagree with their views. A board functions most effectively when diverse views are debated openly and respectfully, and the decisions reached collectively are likewise respected. It also functions most effectively when everyone understands and respects the different and complementary roles of the executive (staff) and non-executive (board members).

Gifts and hospitality

The general rule is that you should not, in your role as a Board Member, accept gifts or hospitality. If you do, there is always the risk it could be interpreted as you being given or invited to something which you wouldn't normally attend, and therefore you may potentially be influenced to show favour towards whoever offers you these gifts and hospitality. Even if this is not the case, there is a risk that your actions could be interpreted that way.

Clearly judgements have to be proportionate. The Code sets out some guidelines to help you decide what action you should take. Your public body should also have an internal policy on the acceptance of gifts/hospitality which will set the Code's guidelines in the context of your particular organisation's work.

Confidentiality

Although Freedom of Information legislation provides widespread public access to information, it is legitimate in some circumstances for a public body to require information and documents to be treated in a confidential manner. Sometimes it is a matter of timing – information that may eventually be released but for the moment it must be kept confidential. You must respect the requirement for confidentiality, even if you do not agree with this requirement.

A related point is that it is not acceptable to disclose information (even if not explicitly confidential) to which you have privileged access as a result of your position if this disclosure leads to personal or financial gain, or is used for political purposes, or would result in damage to the reputation of your public body.

Using Public Body Facilities

The equipment and assets (IT, telephones, photocopiers, meeting rooms, offices etc.) of a public body are paid for by taxpayers – you should only use them in accordance with the organisation's policies. Generally this means only using them in connection with legitimate business of the organisation.

Social Media

When using social media the distinction between work and private life can get blurred, and hastily made comments can get misconstrued. You should be mindful of your role and take care not to compromise your position as a member of a public body by publicly undermining (or appearing to undermine) the actions of the organisation, staff or colleagues. This applies whether you are using your own or the organisation's equipment to access and post comments on social media.

Appointment to Partner Organisations

If you become a director or board member of a company as a nominee of a public body, you need to be conscious of potential conflicts of interest between your two positions. The main point to bear in mind is that if you are nominated in order to represent your public body's interests, then you are still bound by the Code but you may also be required to abide by the rules of the board you have been appointed to. More is said about this in the section on declaration of interests.



Sections 4 & 5: Interests

To ensure complete transparency of decision making by public bodies, and to avoid accusations that members are being inappropriately influenced, the Code requires that you make open to public view all your relevant interests. “Relevant Interests” are all the circumstances that might be considered to affect your judgement during the course of your work for a public body. There are two elements to this – registration of interests and declaration of interests:



Section 4: Registration of Interests

Your public body has a statutory duty to keep a register of the interests of its Members, and this information must be available for public view. It is your responsibility to keep your entries in the register up to date. **You must read the relevant section of the Code for more information.**

Details about two of the categories, namely Category 1 – Remuneration; and Category 2 – Related Undertakings; are considered so important this information must be registered whether or not it is relevant to your role in the public body.

Information about the registration of other interests in relation to the remaining categories is detailed within the Code of Conduct.

Category 3 – Contracts;

Category 4 – Houses, Land and Buildings;

Category 5 – Interests in Shares and Securities;

Category 6 – Gifts and Hospitality;

Category 7 – Non Financial Interests;

Under these categories, you may need to make the judgement on whether the interest could be considered relevant to the work of the public body and whether someone looking in from the outside might consider that your vote or support for a decision could be biased as a result of your interest. If you are in any doubt you should register the interest.

There is no requirement to *register* the interests of those connected to you; however, there **may be** a requirement to *declare* such an interest.

When deciding whether to register gifts or hospitality, remember that they could be offered from any source and not only when you are taking part in official business. The important point to think about is whether these could, or the perception is that these may, influence you in your role as a board member of your public body.



Section 5: Declaration of Interests

This is an area of the Code which comes under particular public scrutiny. It is important that the public and other interested parties have confidence that decisions are being made in accord with the public interest and not for any other reason. So in addition to your entries in the Register of Interests, you may need to declare an interest at a Board or Committee meeting of

your public body prior to a particular item being discussed. Any interest you declare may or may not already be on the Register

You need to consider the objective test:
whether an ordinary 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 decision making.

- If you consider the objective test is met, you should declare your interest and leave the meeting for the duration of the item under discussion/decision.
- If you consider the objective test is not met you do not need to make a declaration and you can take part in the discussion/decision.
- Occasionally, in the interests of transparency you may wish to explain to the meeting that you have considered the matter in question and reached the conclusion that there is no conflict of interest and the objective test is not met, so you will take part in the item under discussion/decision.

The Code goes into more detail about interests which require declaration – **this is an important area, and it is your responsibility to ensure you are aware of the requirements detailed in section 5 of the Code.**

Remember that the Code only requires registration of **your** interests but you must consider whether at a Board meeting for a particular item scheduled to be discussed you should declare any financial or non-financial interests of people or organisations you are connected with. The same principle of the objective test applies.

Membership of More than One Public Body:

Sometimes members may sit on the boards of more than one public body. It is also possible that a member of staff of one public body may be a member of another. This can bring considerable benefits of experience and expertise to each board. Being a member of more than one public body is unlikely, by itself, to result in a conflict of interest, but there can be instances where this will occur. Examples which may cause an issue include:

- When you are a member of more than one body, the duty of collective responsibility applies to each of them. If you find yourself being required to take a decision on something which you have already taken a view on as part of another board or its organisation has stated a clear position on a matter, you will probably need to declare an interest and withdraw.
- In issues involving approval of funding from one body to another, there can be no doubt; you must declare an interest and withdraw if you are a member of the body potentially receiving the funding.
- Similarly in respect of any quasi-judicial decisions – you cannot be involved in the decision making if you are a member of another body which plays a part in, or is the subject of, that decision.
- In any situation where there is a potential conflict between your differing roles, a sense of proportion is needed, but ultimately you will need to make a judgement based on the objective test.

Directly Elected Members:

Direct elections: if you sit on a public body as a result of a direct election (separate from Council elections) you do not automatically have a conflict of interest (and need to declare) just by virtue of being directly elected; but you still need to apply the objective test on a case by case basis.

Dispensations

The Code does allow for dispensations and these may be granted by the Standards Commission. In the vast majority of cases, however, applying clear reasoning to the objective test should be the guide.



Section 6: Lobbying and Access to Members of Public Bodies

Public bodies aim to be open and accessible to the views and opinions of others, and to make their decisions based on the widest possible evidence and arguments. As a Member you will probably be approached by those wishing to make their views known. This is perfectly legitimate but care is needed, and in these situations you should **be guided by the Code**, in particular:

- Do not do or say, anything that could be construed as your being improperly influenced to take a particular stance on an issue;
- You must not give or be perceived to give preferential access to any one side of an argument
- You must not accept any paid work in which you give advice on how to influence the public body and its members.



Roles, Responsibilities and Sources of Information:

The Chair of the Board

The Chair has additional responsibilities over and above those of Board Members. The Chair should ensure that all Board Members have a proper knowledge and understanding of their corporate roles and responsibilities which should include strategic leadership and the conduct of the Board business. You should seek the advice of your Chair if you are unsure about how to handle an issue.

Scottish Government Sponsor Team

Sponsor teams are responsible, on behalf of Ministers, for the bodies they sponsor. They are the day to day link between the body and the Minister and should ensure, amongst other things, that the public body has in place a Code of Conduct for Board Members approved by Scottish Ministers.

Duties of Public Bodies covered by this framework:

- Promote the observance by its Board Members of high standards of conduct and assist Members in observing the Code of Conduct for Members. This could include offering training for new Members, or refresher courses from time to time;

- Must have a designated Standards Officer to assist board Members observe the requirements detailed in the Code of Conduct and to ensure that the organisation keeps the Register of Members' Interests available, up to date and open to public view

The Commissioner for Ethical Standards in Public Life in Scotland (Commissioner for Ethical Standards)

- Is independent of Government, Scottish Parliament and the Standards Commission for Scotland when investigating alleged contraventions of the Code;
- Receives complaints about the conduct of Members. Complaints can be made by anyone, including members of the public, or staff and Members of the public body you work with.
- If the Commissioner for Ethical Standards considers that there has been a breach of the Code a report about the investigation and the outcome from that process will be issued to the Standards Commission.

The Standards Commission Scotland (Standards Commission)

- Is independent of Government, Scottish Parliament and the Commissioner for Ethical Standards when considering alleged contraventions of the Code of Conduct;
- When a report is passed to it by the Commissioner for Ethical Standards, the Standards Commission determines what action will be taken following consideration of the case.
- Should the Standards Commission hold a Hearing and a breach of Code is determined it will thereafter apply one of the sanctions available to it as detailed in the Ethical Standards Act;
- Provides guidance to public bodies on;
 - the promotion and observance of high standards of conduct by members of devolved public bodies and assist them with that task.
 - the registers of interests for members of devolved public bodies.



Last Word

This guide is designed to help you abide by the Code of Conduct and meet the expectations that bear on those who serve in public life. If in doubt, and before you act, you should seek advice from your Chair, Chief Executive or Standards Officer.

Useful Addresses

Standards Commission for Scotland	www.standardscommissionscotland.org.uk
Commissioner for Ethical Standards	www.ethicalstandards.org.uk
Scottish Government – On Board Guide	www.scotland.gov.uk/Publications/2006/07/11153800/0
Scottish Government – Model Code of Conduct	Http://www.scotland.gov.uk/Resource/0000/00442087.pdf
Scottish Government – Ethical Standards	http://scotland.gov.uk/governance/ethical-standards
Audit Scotland	http://www.audit-scotland.gov.uk
Ethical Standards in Public Life etc. (Scotland) Act 2000	http://www.legislation.gov.uk/asp/2000/7/contents



STANDARDS COMMISSION

S C O T L A N D

Room T2.21,
The Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131 348 6666

E-mail: enquiries@standardcommission.org.uk

www.standardscommissionscotland.org.uk

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