



# Members Code of Conduct

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Sefton Council 

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# Sefton's New Member Code of Conduct

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- Why change?
- Background
- What's not changed
- Disclosable Pecuniary Interests
- Personal Interests
- Pre Determination & Bias



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# Sefton's New Member Code of Conduct – why change?

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- Localism Act 2011
- Reviewed other codes
- Augmented to try to capture a broader adherence to the spirit as well as the letter of the Code of Conduct
- Audit and Governance Committee - 21 March 2018
- Council – 19 April 2018



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## Background

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- Localism Act 2011 – DCLG press release:
- “These new measures will replace the bureaucratic and controversial Standards Board regime, which ministers believe had become a system of nuisance complaints and petty, sometimes malicious allegations of Councilor misconduct that sapped public confidence in local democracy”



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## Background

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- Localism Act 2011 – *R (Dennehey) v LB of Ealing [2013]*
- “the intention of the legislation is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy”
- *R(Calver) v The Adjudication Panel for Wales [2012]* when held that there was a clear public interest in maintaining confidence in local government at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere”



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## What's not changed:

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- Code applies to when acting as a Member
- Code does not apply when acting in private capacity
- You are a representative of the Council and your actions / perceived actions impact on how the authority is viewed



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## What's not changed:

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- With respect to expected behaviour Councillors **MUST** :
  - Treat others with respect
  - Act solely in terms of public interest
  - Declare interests
  - Act in accordance with the Council's policies and procedures
  - Use resources appropriately
  - Promote and maintain high standards of conduct
  - Have regard to the LA Code of Publicity
  - Consider issues with an open mind



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## What's slightly changed:

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- With respect to expected behaviour Councillors **MUST NOT** :
- disclose information given to you in confidence (exceptions)
- bully any person
- do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf, of the authority
- conduct yourself in a manner which could reasonably be regarded as bringing your authority into disrepute
- place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties





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## What's slightly changed:

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- With respect to expected behaviour Councillors **MUST NOT** :
- improperly use knowledge gained solely as a result of your role as a Member for the advancement of yourself, your friends, your family Members, your employer or your business interests.
- act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.



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## Disclosable Pecuniary Interests

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- Statutory definition from Localism Act 2011 in our Code of Conduct
- Criminal Offences:
  - Failure to declare
  - Involvement in decision making
  - Fine up to £5k and / or disqualification from office for up to five years.



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# Disclosable Pecuniary Interests

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- You have a DPI in ANY business of the authority if it is of a description set out in Appendix 3 of the Code
  - Employment, office, trade, profession or vocation
  - Sponsorship
  - Contracts
  - Land
  - Licenses
  - Corporate Tenancies
  - Securities



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## R v Flower [2015]

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- Cllr Flower registered a DPI as a non-executive director of a housing charity, for which he received remuneration
- Housing charity responded to a consultation about the Core Strategy and Cllr Fowler had attended a meeting of the charity where the Core Strategy was discussed and a particular piece of land owned by the charity.
- Cllr Fowler then took part in a meeting of East Dorset Council on the Core Strategy
- Charged under s34(1)(b) for participating in the meeting
- Conditional discharge for 6 months and pay £930 in costs.



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# What's new?

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- **Disclosable Personal interests**
- *You have a disclosable personal interest in any authority business which relates to:*
  - ■ *The interests of a body of which you are a member if*
    - *(a) you were appointed to the body by the authority; or*
    - *(b) it exercises functions of a public nature; or*
    - *(c) it is a charity; or*
    - *(d) one of its main purposes is to influence public opinion or policy (this includes any political party or trade union); or*
    - *(e) any easement, servitude, interest or right in or over land which does not carry with it a right for you to occupy the land or to receive income.*



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## Disclosure and Participation

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- Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer, your business interests, may be so closely tied your personal/professional life that your ability to contribute to a decision in an impartial matter in your role as a Member may be called into question and in turn raise validity about the decision of the Authority



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# Disclosure and Participation

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Would a member of the public, with knowledge of the relevant facts, reasonably regard your personal interest to be so significant that it is likely to prejudice your judgement of the public interest?

- DO NOT become involved in these decisions any more than a member of the public in the same/personal or professional position as yourself is able to do
- DO NOT vote in relation to such matters



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## Pre-Determination and Bias

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- R v Port of London Authority, ex parte Kynoch [1919]: - a decision maker must not 'shut his ears' to an application or an argument





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# Pre-Determination and Bias

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- **Presumed bias** – decision maker has a direct pecuniary interest in the outcome
- **Actual bias** – where the decision maker is shown to have been influenced in his decision-making by personal interest
- **Apparent bias** – most frequent challenge – *Porter v Magill [2001]* test: whether “the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility” of bias.



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# Pre-Determination and Bias

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- **Pre-determination** – *R(Lewis) v Redcar and Cleveland BC [2008]* test:
- ‘whether the member or the body has made their decision with a closed mind or whether the circumstances gave rise to such a real risk of closed minds that the decision ought not in the public interest to be upheld’.
- Needs to be positive evidence to show that a member has a closed mind, prior observations or apparent favouring of a particular decision will not usually suffice to persuade a court to quash a decision.



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# Pre-Determination and Bias

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- **Pre-determination** – *R(Lewis) v Redcar and Cleveland BC [2008]* test:
- The courts have long recognised that Councillors will take public positions on issues and will commit themselves publicly to policies as part of democratic role – **democratically accountable decision makers who have been elected to pursue policies are entitled to be predisposed to determine matters provided they have regard to all material considerations and give fair consideration to relevant points raised with them.**



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## Pre Determination & Bias

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- Where a member has campaigned on an issue in their political capacity then the Localism Act 2011 seeks as far as practicable to include Councillors in the decision making process and not preclude them.
- Whether a member can be included in the decision making process, is still a matter of judgement on the basis of what has been said and to what audiences.

**Will what you have said or done affect your ability to fairly hear all the evidence, advice and opinion and then weigh up those relevant factors to come to a decision in the public interest?**

