

The Code of Conduct of Uttlesford District Council

A Guide for Members - October 2012

Preface

On the 15 May 2012 Uttlesford District Council resolved to adopt its current Code of Conduct for members with effect from 1 July 2012. Under the Localism Act 2011 town and parish councils must adopt a Code of Conduct and may adopt the Code of Conduct of their district.

This guidance from the Standards Committee of Uttlesford District Council provides an overview of the district council's Code of Conduct. It aims to provide members of the district council and those town and parish councils that have adopted the Uttlesford Code with a general understanding of the Code of Conduct and its requirements. The Standards Committee will have regard to this guidance in considering allegations of breaches of the Code of Conduct.

By its nature this guidance can be in general terms only. Any member of the district council or of town and parish councils which have adopted the Uttlesford Code should take specific advice from the Monitoring Officer where appropriate.

The Code of Conduct is divided into four parts. Part 1 contains general provisions. Part 2 deals with members' interests. Part 3 is concerned with registration of interests and Part 4 relates to conflicts of interests on the part of members of the district council's executive (cabinet). The Standards Committee consider that Parts 2 and 3 of the Code of Conduct accurately reflect the legislation and that no further guidance with regard to those parts is required. Part 4 has no application to town or parish councils. So far as it applies to members of the executive of Uttlesford District Council the Standards Committee considers that the same comments that it makes with regard to Parts 2 and 3 apply. This guidance therefore is primarily concerned with the general obligations under the Code of Conduct. Additional guidance is given with regard to some specific topics which relate to the Code.

General Obligations

1 Treating others with respect (paragraph 3.1 of the Code)

Members must treat others with respect. In politics rival groupings are common either in formal political parties or in informal alliances. Each will campaign for their ideas and may seek to discredit the policies and actions of their opponents. This is part of the democratic debate and does not amount to failing to treat someone with respect.

Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers who do not have a right of reply. Chairmen of meetings are expected to apply the rules of debate and the procedural rules or standing orders to prevent abusive or disorderly conduct.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should as far as possible treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

2 Protocols or Codes of Practice (paragraph 3.2 of the Code)

Some authorities (including the district council) adopt protocols or codes of practice supplementary to the Code of Conduct. Examples for the district council include its Codes of Good Practice: Probity in Planning and Probity in Licensing, its member officer protocol etc. Where they exist, such protocols are incorporated in the Code of Conduct by reference and members must observe the provisions thereof. Failure to do so would constitute a breach of the Code of Conduct.

3 Complying with Equality Laws (paragraph 3.3.1 of the Code)

The Equality Act 2010 makes it unlawful for anyone to be discriminated against on the basis of their age, disability, gender reassignment, marriage or civil partnership status, race, religion or belief, sex or sexual orientation. In addition, the Human Rights Act 1998 provides that the enjoyment of the rights and freedoms contained in the Act shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Under these two pieces of legislation a council may be liable for any discriminatory acts which may be committed by any of its members. Members should therefore be careful not to act in a way which may amount to discrimination or which hinders the council's fulfilment of its duties under the legislation.

4 Bullying (paragraph 3.3.2 of the Code)

Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. This may happen on one occasion or be part of a pattern of behaviour directed at a weaker person or a person over whom a member has some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability and may adversely affect their health.

Bullying may be contrasted with legitimate challenges which a member can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy or asking officers to explain the rationale for the professional opinions they had put forward. Members are entitled to challenge fellow councillors and officers as to why they hold their views.

It is however, important that issues about poor performance are raised in the correct way and in a proper forum. In this connection the district council has a protocol for member officer relationships which deals with how members of the

district council should address capability and performance issues. Town and parish councillors should appreciate that in their dealings with employees of their councils they are acting in an employment and not a political capacity and that they should therefore not make public attacks upon the capability or performance of council staff.

Criticisms of other members or officers which constitute a personal attack or are of an offensive nature are likely to cross the line of what is acceptable behaviour.

5 Intimidation (paragraph 3.3.3 of the Code)

Members must not intimidate or attempt to intimidate any person who is or who is likely to be a complainant, a witness or who is involved in the administration of any investigation or proceedings relating to an alleged failure to comply with the Code of Conduct. Members who are subject to allegations that they have breached the Code of Conduct will have the opportunity of putting their case forward during any investigation and at any hearing which may follow. Members should allow these processes to follow their natural course. If a member does attempt to intimidate anyone involved in an investigation concerning their conduct (or the conduct of another councillor) they may be the subject of a further complaint of having breached the Code of Conduct.

6 Compromising the impartiality of officers of the authority (paragraph 3.3.4 of the Code)

Council officers must be impartial and should not be coerced or persuaded to act in a way which would undermine their neutrality. Members must not compromise or attempt to compromise the impartiality of anyone who works for or on behalf of the authority. For example members should not ask officers to help them prepare party political material or to help them with matters relating to their private business. Members should not provide or offer any reward or incentive or disincentive in return for acting or not acting in a particular way or reaching or not reaching a particular decision.

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

7 Confidential Information (paragraph 3.3.5 of the Code)

This applies to any information which has been given to a member in confidence by anyone or information which has been acquired by a member which the member believes or ought reasonably to be aware is of a confidential nature. There are four general exceptions to this rule which are:

- i) A member has consent to disclose the information from a person authorised to give it.
- ii) Disclosure is required by law
- iii) Disclosure is made to a third party for the purpose of obtaining professional advice providing that third party agrees not to disclose the information to any other person.
- iv) The disclosure is reasonable and in the public interest; is made in good faith and is made in compliance with the reasonable requirements of the authority.

The first three of these are self-explanatory. The fourth (disclosure in the public interest) is only justified in limited circumstances. Firstly the disclosure must be reasonable. In determining whether disclosure is reasonable the following points should be taken into consideration:

- Whether the member believes the information disclosed and any allegation contained in it is substantially true.
- Whether the disclosure has been made for personal gain (e.g. where payment has been received for disclosing the information).
- The identity of the person to whom a disclosure is made (it is more likely to be reasonable to disclose information to the police or regulatory body than it would be to disclose information to the media).
- The extent of the information disclosed (inclusion of unnecessary detail and in particular private details is likely to render the disclosure unreasonable).
- The seriousness of the matter.
- The timing of the disclosure (if the matter to which the disclosure relates has already occurred and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing or likely to reoccur).
- Where the disclosure would involve the council breaching a duty of confidence owed to another person.

The second requirement is that the disclosure must be in the public interest. This is likely to involve one or more of the following matters or something of comparable seriousness that has happened in the past, is currently happening or is likely to happen in the future.

- The commission of a criminal offence.

- Failure of the council or some other party to comply with any legal obligation.
- A miscarriage of justice.
- Danger to the health or safety of any individual.
- Potential damage to the environment.
- Information tending to show that any of the matters set out in the bullet points above is or is likely to be deliberately concealed.

The third requirement, that disclosure is made in good faith, will not be met if a member acts with an ulterior motive, for example to achieve a party political advantage or to settle a score with a political opponent.

The final requirement is that in making the disclosure a member should comply with the reasonable requirements of his or her authority. Before making a disclosure, members should therefore comply with the council's policy or protocols on matters such as whistle-blowing and confidential information. Members should first raise concerns through appropriate channels set out in such policies or protocols.

The decision as to whether disclosure of confidential information is reasonable and in the public interest involves a balancing exercise weighing up the public interest in maintaining confidentiality against any counter public interest favouring disclosure. This involves a careful consideration on how confidential the information is, on any potential harmful consequences of its disclosure and on any factors which may justify its disclosure despite these potential consequences.

In some situations it is extremely unlikely that a disclosure can be justified in the public interest e.g. where disclosure would be a criminal offence or where the information is protected by legal professional privilege.

Members who are considering disclosing confidential information relying upon the public interest exemption are recommended to seek advice before doing so either from the council's Monitoring Officer or externally relying upon the exemption at iii) above.

8 Preventing access to information (paragraph 3.3.6 of the Code)

The public has various rights of access to information held by local authorities including access to information legislation, the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations Act 2004. Members must not attempt to prevent any person from accessing information which they are entitled to by law. Further guidance as to the types of information the public can access can be obtained from the council's Monitoring

Officer or from the Information Commissioner's Office at www.ico.gov.uk or by calling 0845 630 6060.

9 Disrepute (paragraph 3.3.7 of the Code)

Members must not conduct themselves in a manner which could reasonably be regarded as bringing their council or their office as councillor into disrepute. Under the standards regime set up under the Local Government Act 2000 which was effective until 1 July 2012, Standards Committees and The Adjudication Panel/First Tier Tribunal regularly found that a member who had breached one or more of the other provisions of the Code of Conduct had by virtue of that breach also brought their council or office of councillor into disrepute. The Standards Committee do not consider this approach to be appropriate. This particular provision of the Code will therefore only apply in circumstances where a member has behaved in such a way as to bring the council or the office of councillor into disrepute without other provisions of the Code being engaged. The Standards Committee's view is that conduct is likely to bring the council into disrepute if it could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties. Conduct will bring the office of councillors into disrepute if it could reasonably be regarded as reducing the public confidence in a member being able to fulfil his or her role or the ability of members generally to fulfil their roles as councillors. An example of conduct which would bring the council into disrepute would be where a member makes allegations regarding the council's performance in fulfilling its functions and duties which are not supported by evidence. An example of the conduct which would bring the office of councillor into disrepute would be where a member of the council seriously disrupted a meeting of the council or one of its committees.

10 Using your position improperly (paragraph 3.3.8 of the Code)

Members should not use or attempt to use their position as councillor for their own personal gain or to endeavour to achieve a gain or loss for a third party. Members should not seek to further their own private interests through their position as a member.

11 Use of resources (paragraph 3.4 of the Code)

If a council provides any resources to any of its members (e.g. telephone, IT, transport or support from council employees) the member must use the resources strictly in accordance with the terms upon which those resources are supplied to them. Council resources may not be used improperly for political purposes (including party political purposes) and members must have regard to any applicable local authority code of publicity made by central government under the Local Government Act 1986.

Additional Guidance

12 Blogging & Social Networking

A blog is a frequently updated individual website discussing subjects ranging from the personal to the political. Social networking is an online method of sharing information, opinions, photographs etc with contacts and associates. Social networking sites include Facebook, Twitter and Myspace.

Blogging or social networking can be sponsored by a council, carried out by a member as an individual or carried out anonymously.

Use of online media to promote a member's work as a councillor or through a council website is likely to be regarded as conducting the business of the authority and would therefore engage the Code of Conduct. Contents of private, non-political blogs are less likely to engage the Code of Conduct. It is the contents of a blog and not the circumstances surrounding its creation that would determine whether or not its contents fall under the Code of Conduct. A disclaimer in a private blog which says that any comments are not made in an official capacity will not necessarily prevent breaches of Code of Conduct being found. Anonymous blogging may engage the Code of Conduct but it will be necessary to demonstrate that a member was indeed the author of the blog.

When blogging or using social networking members should consider whether the Code of Conduct is engaged by reference to paragraph 2 of the Code. Factors which ought to be considered in reaching this decision are:

- How well known or how high a profile the member is. The higher the profile a member has the more likely it is that he would be seen to be acting in an official capacity.
- The privacy settings on a member's blog or social networking site. A blog with wide access may lead constituents to assume that a member is acting as their representative thereby making it more likely that the Code of Conduct is engaged.
- The profile on the member's blog or social networking site. A clear statement that the blog is political or personal will be of assistance although it may be possible in a personal blog to give the impression that a member is acting as such even though the blog states otherwise. Members may not discuss council business on a personal blog and/or make offensive remarks about others who are linked to the council and then claim to be doing so in a private capacity.

When using a blog or social networking site, members should have regard to the following provisions of the Code:

- 3.1 The requirement to treat others with respect.
- 3.3.2 Bullying
- 3.3.5 Restriction on disclosure of confidential information.
- 3.3.7 Not to engage in conduct which could reasonably be regarded as bringing the council or the office of councillor into disrepute.
- 3.4 The requirement to use council resources properly.

Members should also consider other online activity where the Code of Conduct may apply. For example, if a member places content on another site (e.g. forum posts or another person's social networking site) a member could give the impression that they are acting as such if they identify themselves as being a councillor or if they put content on these sites which could only have been obtained by a member of the council.

Charities and the Code of Conduct

The Code of Conduct makes provisions for the registration and declaration of disclosable pecuniary interests, other pecuniary interests and non-pecuniary interests. Unless a member is employed or engaged by a charity for profit or gain a member's relationship with a charity will not be a disclosable pecuniary interest.

Membership of a body directed towards charitable purposes or being in a position of general control or management of such a body is registerable under the Code of Conduct as a non-pecuniary interest. "Membership" of a charitable body is more than merely giving support to the charity by means of, say, regular charitable donations. Typically membership will confer certain rights such as the ability to vote on issues relating to the charity, discounted admissions (e.g. in the case of National Trust and English Heritage) etc. "Being in a position of general control or management" involves a closer relationship with the charitable body such as being a charitable trustee or a member (paid or unpaid) of the board of directors.

Whenever a matter arises at a meeting of the council, its executive (in the case of the district council only), or any committees or sub-committees of the council or of the council's executive (in the case of the district council only) a member who is a member or in a position of general control or management of a charitable body must disclose the existence and nature of that interest. If the matter under consideration may affect the financial position of the charitable body to a greater extent than the majority of council tax payers, rate payers or inhabitants of the ward or wards affected by the decision or (if the decision is not ward specific) other council tax payers, rate payers or inhabitants of

the authority's area then the interest would also be a pecuniary interest by virtue of paragraph 5.2 of the Code of Conduct. In such circumstances, the member should consider to what extent they can participate in the decision making process having regard to paragraph 9 of the Code of Conduct (Effect of interests upon participation in meetings).

For the avoidance of doubt freemasonry is one of the world's oldest secular, fraternal and charitable societies. As such it is a charity and should be treated accordingly. Councillors who are freemasons should therefore enter that fact in their register of interests as being a member (or being in a position of general control or management as the case may be) of a body directed towards charitable purposes.

Gifts and Hospitality

Members are required to register as a non-pecuniary interest details of any gifts or hospitality worth £25 or more. The registration should include details of the identity of the donor (e.g. the person, company or body who made the gift or provided the hospitality) and the nature of the gift or hospitality supplied.

Gifts and hospitality are only registerable when they are received by a member in their capacity as a councillor. Gifts and hospitality from family and friends on a personal basis are not registerable.

Hospitality received by the chairman or vice-chairman of the council or the mayor or deputy mayor of a council or any other member of a council representing the chairman, vice-chairman, mayor or deputy mayor in that behalf at ceremonial functions does not need to be registered, this being regarded as being regarded as hospitality to the council rather than the individual. Gifts given to chairman or vice-chairman of the council or the mayor or deputy mayor of a council or any other member of a council representing the chairman, vice-chairman, mayor or deputy mayor which are intended for the benefit of the council and not the member personally are similarly not registerable.