

COUNCILLOR CODE OF CONDUCT REVISION: CONSULTATION, FEBRUARY 2021

RESPONSE FROM ACCOUNTS COMMISSION

1. Do you agree that there is a need to revise the Councillors' Code of Conduct?

We welcome the consultation and the aim to update the code and to make it easier to understand. We also welcome strong focus on equal opportunities and appropriate behaviour more generally.

2. Do you have any comments on the changes proposed for Section 1: Introduction to the Code of Conduct?

Yes No

3. Do you have any comments on the changes proposed for Section 2: Key Principles of the Code of Conduct?

Yes No

Regarding paragraph 3.31 “I accept that if I am a director of a company or charitable trust, as a nominee of the Council, I will be responsible for identifying, and taking advice on, any conflict of interests that may arise between the company or charitable trust and the Council.”. Given there are potentially a broad range of outside bodies including companies, charitable trusts, LLPs, community enterprises etc. we suggest re-wording more broadly to say ‘if I am a director of a company, a trustee of a charitable trust, or hold a similar governance role on an outside body’ rather than the more specific ‘if I am a director of a company or charitable trust’.

We welcome the prominent statement on “identifying, and taking advice on, any conflict of interests”. This is central to the messages in our interest and previous reporting in relation to ALEOs, namely [Arm's-Length External Organisations \(ALEOs\): are you getting it right?](#) in 2011, [Councils' use of arm's-length organisations](#) in 2018, and the [Code of guidance on funding external bodies and following the public pound](#).

4. Do you have any comments on the changes proposed for Section 3: General Conduct?

Yes No

5. Do you have any comments on the changes proposed for Section 4: Registration of Interests?

Yes No

6. Do you have any comments on the changes proposed for Section 5: Declaration of Interests?

Yes No

We offer comment on this section in our role as reporting on councils' statutory duty of Best Value., particularly in relation to ensuring public assurance (and thus public confidence) on councils' leadership, governance and accountability.

As it stands, the proposed revised Code does not require councillors to declare a connection when “Being a member of a body to which I have been appointed or nominated by the Council”... except for quasi-judicial matters or where there is a personal conflict.

The Scottish Government may wish to consider the effect on public confidence in councils’ leadership and accountability if members do not declare a connection regarding their involvement with outside bodies such as ALEOs. Declaring a connection would support openness and transparency, and unless there is an actual or perceived conflict, need not preclude a member from participating (for example, the Commission applies such practice in its own meetings.)

More generally, there is scope to state more clearly the connection-interest-participation stages, for example to clarify stages of: what is the connection; what is the level of interest; and what is the appropriate action eg to participate or withdraw.

It would also be helpful in connection with the above to clarify the meaning of paragraph 5.6, which states: “I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection.”

We note the intention in the draft Code to ‘significantly liberalise’ the requirements for councillors having positions on an outside body. And to that end, we recognise that it may not be desirable to exclude councillors from strategic decision taking because of their involvement with other bodies. The proposed Explanatory Note, however, highlights “making funding decisions about the outside body” as a possible exception from needing to declare an interest. However, the Accounts Commission, and indeed the Standards Commission’s Advice Note:- [Advice for Councillors on Arm’s Length External Organisations](#) have highlighted the risks of conflicts in areas such as funding and scrutiny where a councillor holds a dual role. We are not convinced that this proposal, as explained in the Explanatory Note, achieves the right balance between a reasonable expectation on councillors taking part in strategic decision-making and in encouraging public confidence that such decision-making meets the highest ethical standards.

We recognise that there can be degrees of interest. For example, where a councillor is involved with an outside body, their taking a decision on the council’s overall funding priorities may be quite different from taking a decision that has a direct bearing on the the body they are involved with. It is essential therefore that councillors seek advice on potential conflicts (as noted under Section 3). This highlights the importance of supporting guidance for this part of the Code. The Commission would be happy to contribute to this discussion further should that be helpful.

7. Do you have any comments on the changes proposed for Section 6: Lobbying and Access?

Yes No

8. Do you agree to the changes proposed for Section 7: Taking Decisions on QuasiJudicial or Regulatory Applications?

Yes No

9. Overall, how clear do you find the proposed revised Code?

Very clear / **Mostly clear** / Sometimes unclear / Very unclear

10. Do you have any other comments or suggestions about any aspect of the revised Code?

Yes No