



Neath Port Talbot
County Borough Council

Guide for Members on
Personal and Prejudicial
Interests and when making
decisions

Introduction

As a member, when you signed your declaration of acceptance of office, you are confirming that you will observe the Members Code of Conduct.

It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member.

Ultimately you are responsible for the decisions you take and can be held to account for them.

However, this does not imply that you can take decisions which breach the Code or contrary to advice simply because the decision is yours to take.

It is often the case that the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, is the issue that causes the most difficulty for members. This coupled with issues of predetermination and bias.

It is strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask the Head of Legal Services for advice.

Contents

		Page
1	Personal Interests	4
2	Prejudicial Interests	8
3	Consequences of Not Declaring	10
4	Dispensations	11
5	Pre Determination	13
6	Miscellaneous Issues and Concerns	15
7	Contact Details	19

Personal Interests

When will I have a personal interest?

You have a personal interest when a decision relates to or is likely to affect:-

- (a) Anything that could affect your quality of life (positively and negatively) or your financial position i.e. would you gain or lose from a matter under consideration;
- (b) Your job or business;
- (c) Your employer or company in which you are a partner or director
- (d) Someone who has contributed to your election costs or member expenses;
- (e) Any company where you have shares over £25,000 or more than 1% of the total share value which has premises or land in your area;
- (f) a close personal associate (this could include close friends, close relatives, colleagues with who you have strong connections, business associates **BUT NOT** distant relatives or people you come into contact with through your work);
- (g) Any contract that NPT makes with a company in which you are a partner, paid director or hold shares;
- (h) Any land in which you have an interest in the NPT area;
- (i) Any land let by your authority to a firm in which you are a partner, paid director or hold shares;
- (j) Any land in the NPT which you have a license to occupy for at least 28 days;
- (k) Anybody to which you have been elected appointed or nominated by NPT;
- (l) Any public authority or body exercising functions of a public nature, charity, public opinion or policy, trade union or professional association, private club or society in the NPT area of which you are a member or in a management position.

What happens if I have a Personal Interest?

If you declare a personal interest you can remain in the meeting, speak and vote on the matter unless your personal interest is also a prejudicial interest.

What do I do if I have a personal interest?

You must declare any personal interest at a meeting before the matter is discussed or as soon as it becomes apparent to you, even if it is on your register of interests.

At what type of meetings must I declare a personal interest?

You must consider whether an interest needs to be declared at any of the following meetings:

- (a) Meetings of the relevant authority i.e. full Council
- (b) Meetings of any executive or board of the relevant authority i.e. Cabinet and Cabinet Board
- (c) Meetings of any committee, subcommittee, joint committee i.e. Planning, Licensing, Personnel Committee etc.
- (d) Meetings where scrutiny functions are being undertaken i.e. Cabinet/Cabinet Board Scrutiny Meetings
- (e) Meetings where members or officers of NPTCBC are present– for example, Cabinet Members Briefings, Member Seminars but also where Members are meeting with Heads of Service, Directors or other officers on their own to discuss particular matters. In these types of meetings, if there is a potential personal interest in the area that they discussing, according to the Code, it should be declared to the officer present.

What if I did not realise I had a personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or reasonably ought to be aware of the existence of the personal interest. Clearly you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

What is the Register of Personal Interests and how does it affect me?

All members of authorities have to provide a record of their interests in a public register of interests.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

You must tell the Head of Legal Services in writing within 28 days of taking office, or within 28 days of any new or change to your register of interests, of any interests which fall within the categories set out in the Code.

These categories include:

- (a) your job(s) or business(es);
- (b) the name of your employer or people who have appointed you to work for them;
- (c) the name of any person who has made a payment to you in respect of your election or expenses you have incurred in carrying out your duties; the name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company

- (d) any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register;
- (e) any land and property in the authority's area in which you have an interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use;
- (f) your membership or position of control or management in any other bodies to which you were elected, appointed or nominated by the authority;
- (g) any bodies **exercising functions of a public nature** (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union;
- (h) any private club, society or association operating within your authority's area.

Recent changes to the Code now also require members when disclosing a personal interest for the first time to register it in the register of interests by giving written notice to the Head of Legal Services.

A copy of the Register of Interests is available on the Council's website for Members to view their recorded interests at any time.

Prejudicial Interests

What is a prejudicial interest?

A Personal Interest will also be a Prejudicial Interest if it meets the following test:

“Is your personal interest one which a member of the public would regard as likely to influence your opinion or your ability to be objective”

What is the test for determining whether I have a prejudicial interest?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is an objective test. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether a member of the public, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

Are there any exemptions open to me?

A member will not have a prejudicial interest if the business falls within one of a number of exemptions which are set out below.

- (a) The business relates to another public body of which you are also a member;
- (b) another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- (c) a body to which you have been elected, appointed or nominated by your authority
- (d) your role as school governor where you have not been appointed or nominated by your authority (for example, a

- parent governor) unless the business specifically relates to your school
- (e) your role as a member of a health board where you have not been appointed by your authority
- (f) school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school your child attends
- (g) decisions about statutory sick pay if you receive or are entitled to receive it from your authority
- (h) an allowance or payment for members.

These exemptions **will not** apply where the business you are considering is about determining an approval, consent, license, permission or regulation.

If one of the exemptions applies you are not regarded as having a prejudicial interest. You still must disclose your personal interest but you are allowed to participate in the item under discussion.

What do I do if I have a prejudicial interest?

If you have a Prejudicial Interest:

- (a) You must leave the meeting during the discussion
- (b) You must not exercise delegated powers
- (c) You must not seek to influence the decision
- (d) You must not make written or verbal representations

UNLESS

- (a) The Standards Committee has granted you a dispensation to speak and vote or speak and not vote.
- (b) The public have a right to speak in which case you have the same right to speak (but you must leave after you have spoken) or you can provide written representations to the meeting;
- (c) You are required to attend an overview or scrutiny committee, by such committee exercising its statutory powers.

Consequences of not declaration a prejudicial interest or personal interest or predetermining a matter.

If no interest is declared or there is a mistake made, then this can have two consequences:

- (1) It can see a complaint being made to the Ombudsman that the Members Code of Conduct has been breached;
or
- (2) It could provide an avenue of challenge against the Council's decision making process rendering any decision the Council would take susceptible to a judicial review.

Dispensations

What is a dispensation?

A dispensation is where it is recognised that a member has a prejudicial interest but that the member should still be entitled to speak and not vote or speak and vote on such a matter in order to ensure that the views of the community are put forward.

Under what grounds can I apply for a dispensation?

If you have a prejudicial interest you can apply to the Standards Committee for a dispensation to allow you to take part in the meeting on one or more of the following grounds:

- (a) At least 50% of the members would be prevented from taking a full part in the meeting because of a prejudicial interest
- (b) At least half of the Cabinet would be so prevented from taking a full part in the meeting
- (c) The political balance would be upset so that an outcome would be affected
- (d) The nature of your interest is one that which would not harm public confidence
- (e) Your interest is common to a significant proportion of the general public
- (f) You have a particular role or expertise that justifies participation
- (g) The business is being considered by an overview and security committee and you do not have a financial interest.

Every year the Head of Legal Services issues to Members a list of their dispensations and to ask whether they are interested in renewing them. If Members want to apply for a dispensation they can do so at any time and will just need to contact the Head of Legal Services to explain what dispensation they wish to have and why they wish to have it.

The nature of the dispensation will be discussed between the Member and the Head of Legal Services.

What do I do if I have a dispensation?

If a dispensation is granted, you should declare the same at a meeting when the issue of declarations is raised and you should complete the form provided by the Democratic Service Staff to confirm the dispensation.

If your dispensation is to speak and vote you can take part in the proceedings as stipulated.

If however your dispensation is to speak and not vote, you should leave the meeting once all parties have spoken and the vote is taking place.

What if I have a dispensation on a general matter such as School Reorganisation but the report itself makes no reference to the organisation that I have involvement with?

The difficulty is that, in certain areas of the County Borough a decision in relation to one school may have an effect on surrounding schools in some way i.e. a redistribution of pupils therefore you need to determine whether your particular interest might be prejudicial in respect of this particular decision, bearing in mind the guidance above . There may be instances where there is no such effect and it could be argued there is no interest but Members need to determine this for themselves, taking advice where necessary.

If that school of interest is specifically referenced in the report in some manner, it does give rise to the possibility of an interest being seen as prejudicial, for example if a school closure recognises that pupils could be allocated to that particular school.

In a situation like this it is recommended that you seek the advice of the Head of Legal Services

Predetermination

What is meant by predetermination and bias?

The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.

Members are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.

What is the law on predetermination and bias?

A decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –

- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
- (b) the matter was relevant to the decision.

It is clear that if a member has given a view on an issue, this, considered in isolation, does not show that the member has a closed mind on that issue. So, the mere fact that a member has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.

Having said this, other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision, (and also, where

appropriate, those following the decision) rather than looking at individual events in isolation.

With this in mind:-

- It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
- If you do comment on a development proposal in advance the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Panel meeting.
- Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

As a member operating within a political environment you should not be afraid to express views on issues. However, in doing so it is important that you avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.

Miscellaneous Issues and Concerns

I am a member of a Community Council, how does that affect my potential interest?

The fact you are a member of a community council means you should declare the matter as a personal interest if a matter comes before a meeting on this issue.

If you are a member of both a community council and a county council you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee.

If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council.

I am a School Governor, what effect does this have on my position as a member when it comes to taking part in a debate and voting on a matter.

Every year, the Standards Committee grants a dispensation to Members who have been appointed as Governors, in whatever form to speak and vote on education matters generally, but more specifically the Strategic School Implement Programme, provided that:

- (a) Participation of the Member in the business to which the interest relates is justified by the Member's particular role
- (b) The business to which the interest relates is to be considered by an Overview and Scrutiny Committee of

the Council and the members interest is not a pecuniary/financial interest.

It is advised that Members consider though whether they have an interest over and above being a School Governor which might affect this (i.e. family member working in a School, children/grandchildren at a school). If so you need to consider the matter separately from the above and determine whether you have a different kind of personal or prejudicial interest.

Even if the interest is not respect of the school that is subject to the report this issue still requires consideration.

The difficulty is that, in certain areas of the County Borough a decision in relation to one school may have an effect on surrounding schools in some way i.e. a redistribution of pupils therefore you need to determine whether your particular interest might be prejudicial in respect of this particular decision, bearing in mind the guidance above . There may be instances where there is no such effect and it could be argued there is no interest but Members need to determine this for themselves, taking advice where necessary. If that school of interest is specifically referenced in the report in some manner, it does give rise to the possibility of an interest being seen as prejudicial, for example if a school closure recognises that pupils could be allocated to that particular school.

The School to which I am a Governor is subject of a report going to Cabinet/Cabinet Board/Committee? What involvement can I have in the process?

The Standards Committee receives a report on an annual basis recommending a general dispensation to all members who are school governors to speak and vote on education matters generally, but more particularly the Strategic Schools Improvement Programme.

You would be able to speak and vote on any matter provided the following tests are satisfied:

- (a) Your participation is justified
- (b) The business relates to consideration by an Overview and Scrutiny Committee and your interest is not a financial interest

In summary therefore provided that you do not develop any form of interest in the course of the next year then your dispensation to speak and vote would enable you to take part in the decision making process. You will just need to ensure that at all times you comply with the Members Code of Conduct in any dealings.

I am a member of a Friends of.... Group within my ward. Do I need to declare an interest?

Yes you do need to declare at least a personal interest and you will need to give consideration to whether it is deemed to be a prejudicial interest in line with the test highlighted above.

The likelihood in this case is that it could be viewed to be a prejudicial interest from a legal perspective alone and therefore you should give consideration to your involvement in the process.

It is recommended that if you wish to continue to speak on such and vote on such matters regardless of any prejudicial interest, it is recommended you make an application for a dispensation?

I have been asked to join a Friends of... Group, will this affect my ability to vote and is there anything I should do?

You need to bear in mind whether your involvement in this group might have an effect on your ability to vote in any matters and whether you would need to declare a personal interest / prejudicial interest.

If you do join you should notify the Head of Legal Services so it could be added to your Register of Interests and should you wish you can then determine whether you wish to apply for a dispensation?

Contact Details

If Members are in any doubt on any issues in respect of their decision making they should contact the following officers:

Craig Griffiths	Head of Legal Services And Monitoring Officer	01639 763767 c.griffiths2@npt.gov.uk
Mike Shaw	Interim Deputy Monitoring Officer	01639 763260 m.shaw@npt.gov.uk
Caryn Furlow	Strategic Manager Policy and Democratic Services	01639 763242 c.furlow@npt.gov.uk
Democratic Services	Annette Manchipp	01639 763300 a.manchipp@npt.gov.uk
	Charlotte Davies	01639 763745 c.l.davies2@npt.gov.uk
	Chloe Plowman	01639 763391 c.plowman@npt.gov.uk
	Jason Davies	01639 763325 j.j.davies@npt.gov.uk
	Jayne Woodman Ralph	01639 763713 j.woodman-ralph@npt.gov.uk
	Nicola Headon	01639 763118 n.headon@npt.gov.uk
	Stacy Curran	01639 763194 s.curran@npt.gov.uk
	Tammie Davies	01639 763313 t.davies5@npt.gov.uk