

PREDISPOSITION, PREDETERMINATION AND BIAS Factsheet

A. What is predisposition?

Predisposition is where you form a provisional view towards a particular outcome, but remain prepared to consider and weigh relevant factors in reaching the final decision. This is particularly relevant in the context of the Development Control Board and Licensing Sub-committee decision-making process.

It is not a problem for you to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. You may even have been elected specifically because of your views on a particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission. However, you must be open to persuasion and the possibility that, however unlikely, you will hear arguments during the debate about the issue that will change your mind about how you intend to vote. As long as you are willing to keep an open mind about the issue, you are entitled to take part in any vote on it.

B. What is predetermination?

Predetermination is where your mind is closed to the merits of any arguments which differ from your own about a particular issue on which you are making a decision, such as an application for planning permission i.e. you make a decision on the issue, without taking all the merits of any arguments into account. If you are involved in making a decision, you should avoid giving the appearance that you have conclusively decided how you will vote at the meeting, such that nothing will change your mind. This impression can be created in a number of different ways, such as quotes given in the press, and what you have said at meetings or written in correspondence.

C. What is bias?

Bias is where you form or show bias against or in favour of a particular person, company or group or a particular site or locality, and/or give the appearance of bias (bias may include pre-judged ideas based on your own prejudices or political affiliations). It does not matter whether there is actual bias – the legal test for apparent bias is whether a fair minded observer aware of all the facts, would conclude there was a real possibility of bias. Rarely will membership of an organisation on its own, such as a national charity, amount to apparent bias. This is unless the organisation has a particular vested interest in the outcome of a specific decision that you are involved in making.

D. Making the decision

There is an important difference between those Councillors who are involved in making a decision and those Councillors who are seeking to influence it. This is because Councillors who are not involved with making a decision, are generally free to speak about how they want that decision to go.

When considering whether there is an appearance of predetermination or bias, if you are responsible for making the decision, you should apply the following test: 'would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that you had predetermined the issue or were biased?' However, when applying this test, you should remember that it is legitimate for you to be predisposed towards a particular outcome, as long as you are prepared to consider all the arguments and points made about the specific issue under consideration.

E. How can predetermination or bias arise? The following are some of the potential situations in which predetermination or bias could arise:

- *Connection with someone affected by a decision* – a decision-making body cannot be seen to make an unbiased decision, or a decision which objectively looks impartial, if a Councillor serving on it, is closely connected with one of the parties involved;
- *Prior involvement* - this sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with;
- *Commenting before a decision is made* - once a lobby group or advisory body has commented on a matter or application, it is likely that a Councillor involved with that body will still be able to take part in making a decision about it. But, this is as long as they do not give the appearance of being bound only by the views of that body. If the Councillor makes comments which make it clear that

they have already made up their mind, they may not take part in the decision. If the Councillor is merely seeking to lobby a public meeting at which the decision is taking place, but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so.

F. Predetermination or Bias and the Code

There is a difference between breaching the Code and being predetermined or biased. It is perfectly possible to act within the Code and still cause a decision you were involved in, to be defective for predetermination or bias. This is because if you render the decision of the Council unlawful due to predetermination or bias, this could reasonably be regarded as bringing the Council or your office into disrepute.

G. Find out more - The Probity in Planning Protocol and the Probity in Licensing Protocol offer further guidance. Advice or clarification can be sought from the Monitoring Officer or the Head of Legal Services.