

COUNCILLOR CONDUCT COMMITTEE

21 OCTOBER 2013

CODE OF MEMBERS' CONDUCT

Report from: Perry Holmes, Monitoring Officer

Summary

This report details recent guidance from the Department for Communities and Local Government on Members' registration and disclosure of Interests. It also advises members of possible amendments to the Councillor Code of Conduct to take account of this new Guidance

1. Budget and Policy Framework

- 1.1 Full Council approved the Code of Members' Conduct on 26 July 2012 and terms of reference for the Councillor Conduct Committee. It is for this Committee to advise Members on how to comply with the Code of Conduct (supported by professional advice from the Monitoring Officer) and to advise the Council on any revision of the Councillor Code of Conduct.

2. Background

- 2.1 Section 28(1) of the Localism Act 2011 required each local authority to secure that its Code of Conduct is consistent with the seven principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Section 28(2) provides that a local authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of pecuniary interests (as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012) and interests other than pecuniary interests.
- 2.2 On 26 July 2012, the Council approved a light touch Code of Conduct which requires members to register only those interests which fall within the definition of disclosable pecuniary interests ("DPIs"). In respect of other interests, the Code requires members to have regard to the seven principles of public life and to act accordingly. For example, it stipulates that members must not place themselves under a financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties, but does not require registration of such interests.
- 2.3 The Council's Code of Conduct places a heavy emphasis on seeking a local informal resolution wherever possible to any complaints about the conduct of a councillor. This reflects the very limited sanctions that can be imposed under this new conduct regime.

- 2.4 Training on Disclosable Pecuniary Interests and the Code of Conduct has been provided to Members, based on the principle that elected members should play as full a role as possible in decision- making.
- 2.5 The training identified that as well as DPIs, Members needed to be mindful of bias and pre-determination but also whether they had a conflict of interest in a decision or might otherwise be in breach of the Code of Conduct if they took part.

3. Disclosable Pecuniary Interests

- 3.1 All Members have completed a form setting out their DPIs, which have been uploaded on to the Council's website. The Monitoring Officer is currently liaising with Parish Councils to ensure that copies of their Codes of Conduct and DPI forms are uploaded on to their own websites and made available on the Council's website.
- 3.2 The receipt of any payment or financial benefit from a trade union is a DPI. However membership of a trade union is not of itself a DPI.

4. Openness and Transparency

- 4.1 In September 2013, the Department for Communities and Local Government revised its guide for Councillors on Openness and Transparency on Personal Interests (the "Guide" attached as Appendix Three), and a revised illustrative text for a Code of Conduct for Members and Co-opted Members.
- 4.2 A letter from Paul Rowsell, the Deputy Director – Democracy referring to this Guide and illustrative Code is attached as Appendix One and a copy of the revised illustrative text for a Code of Conduct for Members is attached as Appendix Two.
- 4.3 The letter from Paul Rowsell states that Councillors should be open and transparent about their personal interests, and in this context refers specifically to Trade Union membership, which the letter states should be treated as a personal, non-pecuniary interest. Further, the letter states that Trade Union membership is an interest that should be registered and declared.
- 4.4 The illustrative Code of Members' Conduct proposes new requirements for Members:
 - 4.4.1 To notify the Monitoring Officer of any disclosable pecuniary as defined by regulations and any pecuniary or non-pecuniary interest which the Council has decided should be included in the Register or which a Member considers should be included to fulfil the duty to act in conformity with the Seven Principles of Public Life; and
 - 4.4.2 Following any disclosure of an interest not on the authority's register or the subject of pending notification, to notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
- 4.5 The Council is not legally obliged to adopt the illustrative Code of Members' Conduct, but may choose to do so. This would be a decision for Full Council.

5. Options

- 5.1 The Councillor Conduct Committee is asked to consider the letter and Guide from the Department for Communities and Local Government and consider the options to:
 - 5.1.1 either recommend to Full Council that the Council should revise its Code of Conduct to incorporate the text for the illustrative Code of Members' Conduct; or
 - 5.1.2 agree not to recommend to Full Council that the Council should revise its Code of Conduct to incorporate the text for the illustrative Code of Members' Conduct or
 - 5.1.3 recommend to Full Council revisions to the Code of Conduct in addition to, or instead of, those proposed in the illustrative Code.

6. Advice and Analysis

- 6.1 The letter and Guide from the Department for Communities and Local Government provides an opportunity for the Councillor Conduct Committee to consider whether to recommend to Full Council that the Members' Code of Conduct should be revised, and if so what revisions would be appropriate.
- 6.2 In considering whether to make recommendations to Full Council for revision of the Code, the Committee should consider whether the current Code of Members' Conduct reflects the statutory requirements, including the requirement that the Code should be consistent with the seven principles of public life. If members conclude that the current Code adequately reflects these requirements, then they are not obliged to recommend that Full Council should revise it. The Monitoring Officer's view is that the current Code complies with these requirements and does not need to be further revised.
- 6.3 Alternatively, while the illustrative code and the letter accompanying it focus on the registration and declaration of trade union membership as a non-pecuniary interest, members may conclude that it is not appropriate to single out trade union membership in this way. Members may wish to consider amendments to the Code requiring membership of other organisations or societies to be registered even though such interests are not DPLs. This would require a further report to the Committee so that the full implications could be considered and a proportionate approach adopted. Councillors are already required under the Code to declare any non-pecuniary interests (whether or not they relate to membership of other organisations or societies) at meetings which give rise to a conflict with the requirements of the Code of Conduct. Attached at Appendix 4 is a briefing note for all Members as requested by the committee. The Monitoring Officer intends to circulate this subject to any comments the committee may have.

7. Risk management

- 7.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Legislation	Section 28(2) Localism Act 2011 can be interpreted to only require registration and disclosure of Disclosable Pecuniary Interests, and Section 28(1) states that a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with the seven principles of public life – the Nolan Principles. Provided that this requirement is satisfied, the Council has discretion in what it includes within the Code.	Since adoption of the Council's new arrangements, the Monitoring Officer has provided Members with advice on disclosure of their interests, including conflicts of interests. The letter and Guide from DCLG is not legally binding on the Council.
Reputation	Failure to adopt robust arrangements about Councillor Conduct could result in reputational damage, particularly if Members partake in decision-making which would be inconsistent with the seven principles of public life.	The Monitoring Officer is to provide updated advice on registration and disclosure and interests to Members.

8. Financial and legal implications

- 8.1 There are no direct financial implications from this report
- 8.2 The legal implications are set out throughout this report.

9. Decisions Required

- 9.1 The Committee is asked to consider this report and appendices and determine whether to recommend to Full Council that the Code of Conduct be revised.
- 9.2 The committee is asked to note and comment on the briefing note attached at Appendix 4 and agree this should be circulated to all Members and co-opted Members who are subject to the requirements of the Code.

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Background papers

Medway Council's Code of Conduct;
Department for Communities letter dated 20.09.13;
Revised Illustrative Code of Conduct; and
Department for Communities Openness and transparency on personal interests: A guide for councillors; September 2013.



Department for
Communities and
Local Government

Chief Executives
Principal Local Authorities in England
Greater London Authority
Fire and Rescue Authorities in England
The London Fire and Emergency Planning Authority
The Broads Authority
National Park Authorities in England
Council of the Isles of Scilly

20 September 2013

Dear Chief Executive,

**OPENNESS AND TRANSPARENCY ON PERSONAL INTERESTS:
A GUIDE FOR COUNCILLORS**

I enclose a copy of the revised plain English guide for councillors on openness and transparency on personal interests, and a copy of a revised illustrative text for a code of conduct for members and co-opted members of local authorities, both of which the Department has today published on its website.

The guide gives straightforward information about how councillors should be open and transparent about their personal interests. It has been revised with new guidance making it clear that councillors should treat Trade Union membership as a personal, non-pecuniary interest. The illustrative code has been revised to reflect the same guidance.

Where a councillor is sponsored by a Trade Union, this constitutes a disclosable pecuniary interest and as such must be registered and declared. The guide now makes it clear that membership of a Trade Union constitutes a personal interest which should be registered and declared. The Government believes that this new guidance will give local people the confidence that their councillors are putting residents' interests before their own and before those of any particular group. I should be grateful if you would please draw the guide and this correspondence to the attention of your monitoring officer.

Yours sincerely

Paul Rowsell

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Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, including your membership of any Trade Union, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register or which you consider should be included if you are to fulfil your duty to act in conformity with the Seven Principles of Public Life. These non-pecuniary interests will necessarily include your membership of any Trade Union.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.



Department for
Communities and
Local Government

Openness and transparency on personal interests

A guide for councillors

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The Guide

This guide on personal interests gives basic practical information about how to be open and transparent about your personal interests. It is designed to help councillors, including parish councillors, now that new standards arrangements have been introduced by the Localism Act 2011¹.

Why are there new rules?

Parliament has abolished the Standards Board regime and all the rules under it. It has done this because that centrally-imposed, bureaucratic regime had become a vehicle for petty, malicious and politically-motivated complaints against councillors. Rather than creating a culture of trust and openness between councillors and those they represent, it was damaging, without justification, the public's confidence in local democratic governance.

The new standards arrangements that Parliament has put in place mean that it is largely for councils themselves to decide their own local rules. It is essential that there is confidence that councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a councillor. Accordingly, within the new standards arrangements there are national rules about councillors' interests.²

Such rules, in one form or another, have existed for decades. The new rules are similar to the rules that were in place prior to the Standards Board regime. Those rules, originating in the Local Government Act 1972 and the Local Government and Housing Act 1989, involved local authority members registering their pecuniary interests in a publicly available register, and disclosing their interests and withdrawing from meetings in certain circumstances. Failure to comply with those rules was in certain circumstances a criminal offence, as is failure to comply in certain circumstances with the new rules.

Does this affect me?

Yes, if you are an elected, co-opted, or appointed member of:

- a district, unitary, metropolitan, county or London borough council
- a parish or town council
- a fire and rescue authority
- a transport or other joint authority
- a combined authority or an economic prosperity board
- the London Fire and Emergency Planning Authority
- the Broads Authority

¹ The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice.

² The national rules are in Chapter 7 of the Localism Act 2011 and in the secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012/1464).

- a National Park authority
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

How will there be openness and transparency about my personal interests?

The national rules require your council or authority to adopt a code of conduct for its members and to have a register of members' interests.

The national rules require your council's code of conduct to comply with the Seven Principles of Public Life, and to set out how, in conformity with the rules, you will have to disclose and register your pecuniary and your other interests. Within these rules it is for your council to decide what its code of conduct says. An illustrative text for such a code is available on the Department's web site.³

Your council's or authority's monitoring officer (or in the case of a parish council the monitoring officer of the district or borough council) must establish and maintain your council's register of members' interests. Within the requirements of the national rules it is for your council or authority to determine what is to be entered in its register of members' interests.

What personal interests should be entered in my council's or authority's register of members' interests?

Disclosable pecuniary interests, and any other of your personal interests which your council or authority, in particular through its code of conduct, has determined should be registered.

Any other of your personal interests which you have asked the monitoring officer, who is responsible for your council's or authority's register of members' interests, to enter in the register.

As explained in the following section, your registration of personal interests should be guided by your duty to act in conformity with the seven principles of public life. You should ensure that you register all personal interests that conformity with the seven principles requires. These interests will necessarily include your membership of any Trade Union.

What must I do about registering my personal interests?

Under your council's code of conduct you must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity – that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in

³ <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships.**⁴.

Your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council's or authority's register of members' interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.

All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority's code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty, with which you must comply.

If you have a disclosable pecuniary interest which is not recorded in the register and which relates to any business that is or will be considered at a meeting where you are present, you must disclose⁵ this to the meeting and tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must tell the monitoring officer within 28 days of disclosing the interest. For this purpose a meeting includes any meeting of your council or authority, of its executive or any committee of the executive, and of any committee, sub-committee, joint committee or joint sub-committee of your authority.

If you have a disclosable pecuniary interest which is not shown in the register and relates to any business on which you are acting alone, you must, within 28 days of becoming aware of this, tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must also stop dealing with the matter as soon as you become aware of having a disclosable pecuniary interest relating to the business.

When you are first elected, co-opted, or appointed a member to your council or authority, you must, within 28 days of becoming a member, tell the monitoring officer who is responsible for your council's or authority's register of members' interests about your disclosable pecuniary interests. If you are re-elected, re-co-opted, or reappointed a member, you need to tell the monitoring officer about only those disclosable pecuniary interests that are not already recorded in the register.

What are pecuniary interests?

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider

⁴ <http://www.public-standards.gov.uk/about-us/what-we-do/the-seven-principles/>

⁵ If the interest is a sensitive interest you should disclose merely the fact that you have such a disclosable pecuniary interest, rather than the interest. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

financial interests they might have (for example trust funds, investments, and assets including land and property).

Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see annex). Interests or your spouse or civil partner, following the approach of the rules under the 1972 and 1989 Acts, are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is **your** disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.

Does my signature need to be published online? Won't this put me at risk of identity theft?

There is no legal requirement for the personal signatures of councillors to be published online.

Who can see the register of members' interests?

Except for parish councils, a council's or authority's register of members' interests must be available for inspection in the local area, and must be published on the council's or authority's website.

For parish councils, the monitoring officer who is responsible for the council's register of members' interests must arrange for the parish council's register of members' interests to be available for inspection in the district of borough, and must be published on the district or borough council's website.

Where the parish council has its own website, its register of members' interests must also be published on that website.

This is in line with the Government's policies of transparency and accountability, ensuring that the public have ready access to publicly available information.

Is there any scope for withholding information on the published register?

Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

When is information about my interests removed from my council's register of members' interests?

If you cease to have an interest, that interest can be removed from the register. If you cease to be a member of the authority, all of your interests can be removed from the register.

What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

Where these prohibitions apply, do I also have to leave the room?

Where your council's or authority's standing orders require this, you must leave the room. Even where there are no such standing orders, you must leave the room if you consider your continued presence is incompatible with your council's code of conduct or the Seven Principles of Public Life.

Do I need a dispensation to take part in the business of setting council tax or a precept?

Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.

When and how can I apply for a dispensation?

The rules allow your council or authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the council or authority considers that:

- without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,
- without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote,
- the granting of the dispensation is in the interests of people living in the council's or authority's area,
- without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your council or authority.

What happens if I don't follow the rules on disclosable pecuniary interests?

It is a criminal offence if, without a reasonable excuse, you fail to tell the monitoring officer about your disclosable pecuniary interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where you are present, or
- on which you are acting alone.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which you have a disclosable pecuniary interest.

If you are found guilty of such a criminal offence, you can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

Where can I look at the national rules on pecuniary interests?

The national rules about pecuniary interests are set out in Chapter 7 of the Localism Act 2011, which is available on the internet here:

<http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

and in the secondary legislation made under the Act, in particular The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found here:

<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

Annex A

Description of Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.
- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
 - under which goods or services are to be provided or works are to be executed; and
 - which has not been fully discharged.
- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- Any tenancy where (to your knowledge) –
 - the landlord is your council or authority; and
 - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where –
 - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
 - (b) either –
 - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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Briefing note for all Councillors

From the Monitoring Officer

October 2013

Re: DPIs and Conflict of Interests (including bias and predetermination)

All Members have received guidance on the registering of Disclosable Pecuniary Interests (DPIs) and all members have completed the necessary forms. The majority of Members have also attended training on the how to deal with DPIs in meetings and also how to deal with conflicts of interests.

This briefing note builds on the guidance and training given.

Summary of DPIs and conflicts of interest

DPIs

DPIs are straightforward. They are those matters set out on your register such as your employment or property that you or your spouse, civil partner or person with whom you are living as husband or wife or civil partner own in Medway. .

If you are present at a Council meeting and the agenda item for consideration is about one of your DPIs , you know to declare that in the meeting and to leave the room for the relevant item. You also know that if you become aware of a DPI during the meeting, which you have not previously registered, you must not participate any further in any discussion and you shall notify the Monitoring Officer of that DPI within 28 days.

It is a criminal offence if, without reasonable excuse, you fail to tell the Monitoring Officer about your DPI.

Conflicts of interest, bias and pre-determination are concepts that are well know to you albeit that they are not so straightforward as DPIs. They can occur where a Councillor does not have a DPI in an agenda item, but there is some other link to it. This might be a link through their wider family or friends or as a result of decisions they have made or things they have said in other settings

Conflict of interests in detail

The Council's Members' Code of Conduct requires that when you are acting in your capacity as a Member or co-opted Member to promote and support high standards.

Members will need to make a judgement in each case whether a conflict of interest arises from any business of the Council that you are involved with and whether this is significant to mean that you should leave the room for the relevant agenda item. You need to apply the old test of prejudicial interest or the person on the Clapham Omnibus test and ask yourself "what would a reasonably minded person with knowledge of all the relevant facts think about my interest in the matter?"

Example: You are a member of the Planning Committee and member of your family lives next door to a proposed development site. If a reasonable member of the public thinks that your close family tie means that you have a conflict of interest then you should declare that interest and not participate in decision making. That makes conflicts of interest slightly more complex than DPIs and may lead to a complaint that you have breached the Council's code of conduct.

A copy of the Council's code of conduct can be found at <http://www.medway.gov.uk/pdf/code%20of%20conduct%2022aug12.pdf>

Bias and predetermination

The basic legal principal is that a Councillor should not take part in decisions of the Council if they are biased or have predetermined the matter. You should bring an unbiased, properly directed mind to the consideration of any matter. This does not mean that you are not entitled to express opinions about matters before you make a decision however you must approach and be seen to approach matters before you with an open mind.

For the main decision making bodies like full Council, Cabinet and the regulatory committees such as the Planning Committee, Licensing Committee or Employment Appeals, Members would normally need to leave the room to avoid any suggestion of conflict of interest or **bias** However, each situation will depend on the facts and you should take advice if you are not clear prior to the meeting. The prohibition only relates to those Councillors who are

making the decision, so provided you don't have a DPI you can still address planning or licensing panel in your role as ward councillor if you are biased or have predetermined the matter.

Here are three examples of conflicts of interest where there are different degrees of significance, to assist you to decide when and if to leave the room.

1) This is a recent example based on a real life item at Planning Committee. This is an example of where the conflict of interest is so significant it is right to leave the room:

An applicant sought retrospective approval for some works done to their property. Their property was next door to Councillor X.

Members of the same group as Councillor X who were in fact on Planning Committee, thought that their close personal relationship with Councillor X meant they had a potential **conflict of interest**. They felt that a reasonably minded member of the public with knowledge of all the relevant facts looking in on the proceedings would conclude that they might also be **biased** in favour of Councillor X (whose property was affected by the application). They therefore left the room at the relevant point and it was recorded in the minutes.

2) This is an example again based on a real life situation at full Council. This is an example where the conflict of interest is not significant enough to justify leaving the room:

Council is considering a question about the charge of £10 (over a three year period) for Blue Badge applications. 5 members have their own Blue Badges. There are 3000 Blue Badge users in the Borough.

The 5 Councillors do not have DPIs since the having of a Blue Badge does not fit any of the criteria of a DPI for inclusion on the register.

They have a theoretical **conflict of interest** i.e. a greater "interest" than the other 50 members in the debate since they could arguably benefit from it. Someone looking in might believe that the 5 members would be **biased** one way.

However when put in the context of the 3000 users, those 5 members represent less than 0.2% of Blue Badge holders. The amount of potential benefit is around £3 a year. On that basis although they would be advised to indicate for the minutes that they possess a Blue Badge, they might well conclude that, on balance, the reasonably minded observer would think that they were capable of keeping an open (i.e. not biased) mind on the debate and that they could decide what was best for the Borough, even as a actual user of the service.

3) Finally, let us consider Scrutiny.

The subtle but important difference for scrutiny committees is that they are not decision-making bodies like Cabinet or Planning Committee, which can be challenged by way of judicial review or through an appeal process. Scrutiny committees conduct a significant role in policy development and pre and post decision scrutiny. So, if you have a conflict of interest on a scrutiny topic or agenda item it is less likely you will need to leave the room.

However there is one important rule contained in the Constitution about scrutiny, which is: ***you cannot scrutinise your own decisions***. Here is a hypothetical example to assist:

Regeneration Community & Culture Overview and Scrutiny Committee are considering the performance of the Ambulance Service and you sit on the Ambulance Service Board (even as a Council appointment). My advice is that you should sit the item out. (You could give evidence as a witness if there was an in depth review being carried out.)

If those circumstances did arise you should move from being round the table and sit in the public gallery, unless you were appointed to the organisation being scrutinised in your own right, in which case you would need to leave the room.

My advice remains that:

Non-Council appointments to outside bodies for which you receive a profit or gain are DPIs since they are an ***“employment, office, trade, profession or vocation carried on for profit or gain”***. If you have a DPI in

appointments to outside bodies, you must leave the room at which the item is discussed; and

Council appointments to outside bodies, even where they are remunerated, are not DPIs. **However, Members must, instead, consider whether or not they have a conflict of interest.**

Conclusions

In considering whether you have an interest, ask yourself three questions:

- 1) Is the agenda item **about** one of the things already registered as a DPI on my Register of Interests? If the answer is yes, you have a DPI which you should declare for the minutes and should leave the room for that item. ;
- 2) Does the agenda item relate to any DPIs held by either yourself, or your spouse, civil partner or person with whom you are living as husband or wife or civil partner that is not currently registered as a DPI on your Register of Interests? If so, upon becoming aware of a DPI during the meeting, which you have not previously registered, you must not participate any further in any discussion and you shall notify the Monitoring Officer of that DPI within 28 days. If the answer is no, ask yourself question 3.
- 3) Would a reasonably minded person think I have a **conflict of interest** in an agenda item or might they think I am **biased** or have predetermined the matter, such that I could not make a balanced decision in the public interest because of my outside links? If the answer is yes, you have a conflict of interest, which you should declare for the minutes and should leave the room for that item.

If in doubt, either I or the legal officers present at the relevant meeting or the Democratic Services Officers will be happy to advise you.

Perry Holmes
Monitoring Officer