

COUNCILLOR CONDUCT COMMITTEE

31 MARCH 2014

WARD IMPROVEMENT FUND GUIDELINES: UPDATE

Report from/Author: Perry Holmes, Monitoring Officer

Summary

This report provides an update on the Council's Ward Improvement Fund Guidance and seeks a recommendation from the Members to Council that the Constitution should be amended to include the Ward Improvement Fund criteria.

1. Budget and Policy Framework

1.1 This Committee has, within its remit, to promote and maintain high standards of conduct by Councillors and co-opted Members and includes the adoption of any procedures necessary in order to undertake this function.

1.2.1 The Committee also deals with allegations of breaches of the Members' Code of Conduct.

1.3 Changes to the Constitution are a matter for full Council.

2. Background

2.1 On 21 October 2013 the Councillor Conduct Committee met to consider a complaint relating to a request for Ward Improvement Funds.

2.2 As a result of the issues raised in the complaint, the Councillor Conduct Committee requested that the Monitoring Officer consider the documentation and guidance relating to Ward Improvement Funds and that he make any required changes to clarify issues, in particular relating to Disclosable Pecuniary Interests (DPI) and conflicts of interest, to ensure openness and transparency.

2.3 This report outlines the findings of the Monitoring Officer, provides updated guidance and recommends that the Council's Constitution be amended to include details of the criteria for Ward Improvement Funds.

3 Advice and analysis

- 3.1 The Council is responsible for administering the Ward Improvement Fund, which includes assessing each application for funding by a ward member to ensure it meets the published criteria, making decisions on allocation of grants and monitoring the expenditure and outcomes of each agreed project. The Ward Improvement Fund is a budget held and managed by the Chief Finance Officer in consultation with ward Members.
- 3.2 The Council's Ward Improvement Fund Guidance has been strengthened to clarify what constitutes lawful expenditure.
- 3.4 Following consultation with the relevant Ward Member(s), the Chief Finance Officer will approve or reject an application for Ward Improvement Funds, or where technical input is required, may refer it to a Director, who will then assign a lead officer to confirm that the Ward Improvement Fund project is feasible and can be delivered within the proposed fund allocated.
- 3.5 In addition to DPIs, the Monitoring Officer has also provided a briefing note on conflicts of interest, predetermination and bias, which had been circulated to all Members. This is attached at Appendix A
- 3.6 The updated Ward Improvement Fund Guidance for Members is attached as Appendix B.
- 3.7 The request form for release of funding from the Ward Improvement Fund (WIF) has been amended to include a section to enable Members to declare any conflict of interests. This is attached at Appendix C.
- 3.8 It is proposed that it be recommended to Council that Chapter 5 of the Constitution - Codes and Protocols be amended to refer to the Ward Improvement Fund criteria, as set out in the Ward Improvement Fund Guidance at Appendix B.

4. Risk management

- 4.1 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	Risk rating
Out of date guidance	Outdated guidance on Ward Improvement Funds can lead to complaints that funds are not allocated correctly in compliance with the Council's processes.	Updated guidance will ensure that the relevant considerations are made with regard to the allocation of funds by the appropriate officers.	D2
Absence of specific reference to Ward Improvement Fund in the Constitution	This could suggest that the Council is not transparent in its decision-making or lead to Members being confused about the criteria for Ward Improvement Funding	Include the criteria for Ward Improvement Fund within the Constitution	D3
Lack of funding for proposed schemes	Members may not be aware of the sums available in their allocated budget can lead to inadvertent representations that community organisations might receive funding	Finance will send regular reports on spend to Members	D2

5. Financial and Legal Implications

- 5.1 This report contains no specific financial or legal implications.
- 5.2 Proposals for Ward Improvement Funds must constitute lawful expenditure for the Council. The Local Government Act 1986 prohibits local authorities publishing any material which, in whole or part, appears to be designed to affect public support for a political party. The Council must also comply with the Code of Recommended Practice on Local Authority Publicity issued by the Secretary of State under the 1986 Act.

6. Recommendation

- 6.1 The Committee is recommended:
- (a) To note the revised guidance and request for ward improvement funds form, as set out at Appendices B and C respectively;
 - (b) To recommend to Council that the criteria for the Ward Improvement Fund is included in Chapter 5 within the Council's Constitution;
 - (c) To request that, dependent upon Council's decision, the Monitoring Officer send a briefing note to all Members to inform them of the updated guidance and request for ward improvement funds form.

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Background Papers:

Councillor Conduct Committee 21 October 2013

<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=404&MId=2785>

Your Council



MEMBER BRIEFING NOTE – No. 01/13

BRIEFING ON: DPI's and CONFLICT OF INTERESTS (including bias and predetermination)

Dear Councillors,

Summary:

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 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.

The Councillor Conduct Committee agreed for this briefing note to be circulated to all Members and co-opted Members of the Council at its meeting on 21 October 2013.

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 known 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. Five Members have their own Blue Badges. There are 3000 Blue Badge users in the Borough.

The five 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 five Members would be **biased** one way.

However when put in the context of the 3000 users, those five 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 an 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 and 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.

If you have any queries, please contact Perry Holmes, **Monitoring Officer**
perry.holmes@medway.gov.uk Tel: 01634 33213

Ward Improvement Fund Guidance

The PA to the Chief Finance Officer will be the central point of contact for members in relation to Ward Improvement Funding (“WIF”). WIF is a budget held and managed by the Chief Finance Officer in consultation with ward members.

The procedure for approving WIF proposals and releasing the funds is as follows:

1. The ward member(s) should complete and sign part 1 (page 1) of the Request for Release of Ward Improvement Funding Form, which includes information regarding members interests; and the form should then be sent to Corporate Finance. E-mail copies will be accepted.
2. Corporate Finance will confirm that there are adequate funds available for the WIF proposal and forward the form to the Chief Finance Officer for completion of Parts 2 and 3 (page 2). The Chief Finance Officer may either accept or reject the WIF proposal, giving due consideration to whether it meets the essential criteria, and notify the member(s) accordingly.
3. Where the request requires technical input, the Chief Finance Officer may refer it to a Director, who will then assign a lead officer to confirm that the WIF project is feasible and can be delivered within the proposed fund allocated. The lead officer must complete part 2 of the form.
4. The Director must then either accept or reject the WIF proposal, giving due consideration to whether it meets the essential criteria, and notify the member(s) and the Chief Finance Officer accordingly.

The essential criteria for WIF are as follows:

- The WIF proposal should command community support and strictly relate to an unmet need in the ward(s), or improve social, economic or environmental wellbeing in the ward(s). This can be demonstrated through constituency and surgery feedback, consultation exercises already undertaken e.g. residents opinion poll, consultation on the council’s 5 year and other plans, complaints analysis and analysis of civic warden calls logged, or future involvement exercises conducted for this purpose.
- No budget should already exist to cover the WIF proposal. This is to reflect the principle that the funds should not be considered as an extension of existing budgets.
- Members may, at their discretion, agree to pool their WIF with another member to a fund a proposal that delivers a benefit across ward boundaries.
- The project can be completed within the financial year and have no ongoing revenue implications. This is to ensure that the investment has an impact on

Medway in the short term and does not commit the council to long term expenditure such as on-going maintenance costs for bollards/lighting, or emptying costs of litter and dog bins and refilling of salt bins.

- The project should be fully costed. This must be carried out by members/officers before the director assesses the proposal. Officers must confirm that there are no on-going costs of the proposal.
- Any approvals required from other bodies must have been received before the WIF proposal is submitted. An example might be where permission is required from another agency or landowner to take forward a project or where planning permission is required
- The proposal for WIF funding must constitute lawful expenditure for the Council. For example, the Local Government Act 1986 prohibits local authorities publishing any material which, in whole or part, appears to be designed to affect public support for a political party. The Council must also comply with the Code of Recommended Practice on Local Authority Publicity issued by the Secretary of State under the 1986 Act.
- Any works or services required from other bodies must be procured in accordance with the Council's Contract Procedure Rules.

Submissions must be made in sufficient time to ensure that schemes can be completed before the end of the financial year as there will be no automatic roll-forward of unspent amounts. In past years, where a project has been committed with director approval before the 31 March but circumstances such as workload or the time of year in the case of tree planting, for instance, have prevented expenditure occurring, then funds have been rolled over, but there is no guarantee that this will continue in future years.

MEDWAY COUNCIL

REQUEST FOR RELEASE OF WARD IMPROVEMENT FUNDING

PART 1 (To be completed by Members)

PA to Chief
Finance Officer,
2nd Floor
Gun Wharf
ME4 4TR
Tel: 3322283

Members to insert comment into blue area (grey if printed)

Ward affected by proposal :

Location of proposal :

Outline of proposal :

Are there any ongoing maintenance costs for the above proposal? *(delete as applicable)*

Yes / No

If Yes please demonstrate:

Costings for proposal:

£

1)

2)

3)

4)

Total Cost:

0.00

Does this proposal command community support?

If YES please demonstrate:

Do you have any conflict(s) of interest or connection with the organisation in this proposal? *(delete as applicable)*

Yes / No

if yes, please state

Payment of Funds :

(This must be completed with a contact name & address and a club/school/society name) If the work is internal please include a contact at Medway Council)

Payee Name/Internal Budget Code:

Payee Address:

Telephone:

Email:

Proposed by Member(s):

(e-mailed forms are fine)

Name:

Signed:

Name:

Signed:

Name:

Signed:

MEDWAY COUNCIL

REQUEST FOR RELEASE OF WARD IMPROVEMENT FUNDING

PART 2: Assessment of proposal to be completed by Lead Officer

Name _____ Signed _____

Essential Criteria

Does Medway Council have a budget for this proposal?	YES/NO
Will the proposal be completed by 31st March?	YES/NO
Do all affected parties agree with the proposal?	YES/NO
Have all necessary statutory consents been obtained (Planning consents etc)?	YES/NO

Desirable Criteria

Can the proposal be carried out in conjunction with other initiatives to maximise the impact on the area?	YES/NO
Does the proposal attract funding from external sources?	YES/NO
Does the proposal have a long term/sustainable effect on the environment?	YES/NO

PART 3: To be completed by Director of _____

Signed: _____ Date: _____

Recommend : YES/NO