



Special Advisory Group

7 October 2013

Standards Committee

14 October 2013

Report Title	Review of the Constitution – Article 9 and Councillor Code of Conduct	
Cabinet Member with Lead Responsibility	Leader, Cllr Roger Lawrence	
Wards Affected	All	
Accountable Strategic Director	Keith Ireland, Strategic Director - Delivery	
Originating service	Legal	
Accountable officer(s)	Fiona Davis	Head of Service – Governance and Regulatory
	Tel	01902 554932
	Email	fiona.davis@wolverhampton.gov.uk

Recommendation(s) for action or decision:

The Special Advisory Group and Standards Committee are recommended to agree that Article 9 of the Constitution – Standards of Conduct and the preamble to the Councillor Code of Conduct be revised to incorporate illustrative text published by the Department for Communities and Local Government (DCLG) on 20 September 2013 (Appendix 1) and to refer the amendments to Council for approval on 6 November 2013.

Recommendations for noting:

The Special Advisory Group and Standards Committee are asked to note that updated Guidance for Councillors on openness and transparency on the declaration of Personal Interests under the Localism Act 2011, issued by DCLG on 20 September 2013, will be circulated to all Councillors.

1.0 Purpose

- 1.1 To advise Special Advisory Group and Standards Committee of two publications from DCLG issued on 20 September 2013 relating to Standards:
- a) illustrative text for the Code of Conduct, and
 - b) an update to guidance for Councillors on “Openness and Transparency on Personal Interests”.
- 1.2 To recommend revisions to Article 9 of the Constitution and preamble to the Councillor Code of Conduct as a result of (a) and to recommend (b) is circulated to all Councillors.

2.0 Background

- 2.1 The current Councillor Code of Conduct contained in Appendix 2 of the Constitution was approved by Council on 11 July 2012. It provides the framework for Councillor and Co-opted Member compliance with the Standards regime contained in the Localism Act 2011.
- 2.2 The Council is required to adopt a Code of Conduct for Councillors and Co-opted Members under Section 27 of the Act. Under Section 28(1) the Code of Conduct must be consistent with the Nolan principles, of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 2.3 Unlike the previous Standards regime there is no national model code and local authorities have discretion regarding their Councillor Code of Conduct provided it is consistent with the Nolan Principles and provides for the registration and declaration of interests. Guidance and advice is, however, issued by central government from time to time.
- 2.4 On 20 September 2013 Paul Ronsell, Deputy Director – Democracy for DCLG issued a revised plain English guide for councillors on Openness and Transparency on Personal Interests and a revised illustrative text for a code of conduct for Councillors and Co-opted Members of local authorities.
- 2.5 The guide gives straightforward information about how Councillors should be open and transparent about their personal interests. It has been revised with the aim of 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.
- 2.6 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.

2.7 A copy of the illustrative text is attached at Appendix 1 to this report. The text restates the Nolan principles as they apply to the Code of Conduct and it is recommended that Article 9 – Standards of Conduct and the preamble to the Councillor Code of Conduct in Appendix 2 to the Council’s Constitution be amended to reflect the illustrative text. Copies of the proposed revisions to the constitution will be available for Special Advisory Group on 7 October 2013.

2.8 It is further recommended that the updated guidance on openness and transparency on personal interests at Appendix 2 to this report is circulated to all Councillors.

3.0 Financial implications

3.1 There are no financial implications arising from the recommendations in this report.
[GE/03102013/S]

4.0 Legal implications

4.1 The legal context is stated in paragraph 2.2 of this report. [FD/02102013/C]

5.0 Equalities implications

5.1 There are no direct equalities implications arising from this report.

6.0 Environmental implications

6.1 There are no direct environmental Implications arising from this report.

7.0 Schedule of background papers

7.1 The Constitution and DCLG documentation.



Department for
Communities and
Local Government

Openness and transparency on personal interests

A guide for councillors

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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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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.

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.