

STANDARDS COMMITTEE

28 January 2013

CODE OF CONDUCT – ADVICE TO PARISHES

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

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RECENT REFERENCES:

ST 93 Localism Act 2011 – Code of Conduct – 6 September 2012

EXECUTIVE SUMMARY:

Members will recall from the last meeting that it was intended to issue further guidance to all Parish Councils to ensure, as far as possible, District-wide consistency in the operation of the revised Code of Conduct.

Not surprisingly, there have been enquires from a number of Parish Clerks prior to and immediately following their Council adopting the revised Code. Therefore, on 11 January 2013, the attached guidance note was issued which addressed the most frequently occurring queries.

RECOMMENDATION:

That the updated guidance provided to Parish Councils be noted and Members raise any additional matters which they consider could be usefully included in any future communications with Parishes about the revised Code of Conduct.

OTHER CONSIDERATIONS:

SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

An Efficient and Effective Council.

RESOURCE IMPLICATIONS:

Responding to Parish Code of Conduct and related questions, and providing general advice, can be time consuming on occasions, but is being dealt with at the current levels.

RISK MANAGEMENT ISSUES

None

BACKGROUND DOCUMENTS:

None

APPENDICES:

Appendix A – Code of Conduct Guidance Note issued to Parish Clerks (11/1/13)



PARISH CODE OF CONDUCT – UPDATED GUIDANCE

Firstly, thank you to all the Councillors and Clerks who attended the Code of Conduct training session held in the Guildhall, Winchester on 8 November 2012. There was excellent participation throughout and some very challenging questions at the end of the evening!

As many of you have found out, the legislation surrounding the revised Code was not drafted in particularly clear or helpful terms and, since its introduction, Monitoring Officers in Hampshire and the Hampshire Association of Local Councils (HALC) have been working to improve the clarity and consistency of interpretation. Set out below are a number of matters where recommended practices have been amended, plus a few guidance pointers on the most 'popular' questions to date.

Dispensations (Localism Act 2011 – Section 33(2))

It is now clear that Parish Councils (and not the Monitoring Officer) have the power to issue dispensations to Parish Councillors. So instead of submitting a request to the MO, any Parish Councillor seeking a dispensation will submit an application to the Clerk, who will report the request to the Parish Council for determination. This will require a minor change to the Code and that is set out in Appendix A.

The categories for seeking a dispensation in relation to disclosable pecuniary interests are as follows:-

- 1) the number of Councillors affected is so great a proportion of the Council that it would impede business.
- 2) it would upset the political balance of the Council to such an extent as to alter the likely outcome of the meeting.
- 3) the dispensation would be in the interests of persons living in the area.
- 4) it is otherwise appropriate to grant a dispensation.

The Act does not specifically provide the mechanism for the consideration of dispensations for personal and prejudicial interests under local codes – but using the same criteria would be a reasonable approach.

In our local Code, we continued to provide some general exceptions when dispensations would not be needed for personal and prejudicial interests. These are set out in Part 8, para 2.3 of the Code and include setting the Council Tax precept. However, the 2011 Act does not provide such a mechanism for general exceptions to the new category of disclosable pecuniary interests. This means, when interpreted literally, that because a Councillor's home address is on the Register, that is a disclosable pecuniary interest and no Councillor can vote on the precept unless they have a dispensation!

This sounds absurd, but as non-compliance with the Act is potentially a criminal offence, a number of authorities (including the County Council), are using dispensations to avoid risk of challenge by residents who do not like the Council's decision.

This can be done by the Clerk providing a proforma for Councillors to sign before the meeting and getting the Council to make the decision, based on Category 1 above, before the precept debate takes place. The dispensation should last until each Councillor comes up for re-election. This would also have to be done for new co-opted Councillors in following years.

Declaring Interests under the Code of Conduct – Revised Provision in Standing Orders

Also set out in Appendix A to this note is a suggested provision for the above, adapted from the City Council's version, which Clerks may wish to use (subject to any version/guidance already received from HALC). The 2011 Act requires a reference to be made in the Council's Standing Orders as to when a Member is required to leave the meeting room in relation to disclosable pecuniary interests. Appendix A meets this requirement – and goes wider to meet the other provisions on personal and prejudicial interests in the local Code.

Disclosable Pecuniary Interests

It is not surprising that we have received a number of queries about the practical application of the new disclosable pecuniary interests (DPI) and Register of Interests form, not least because Councillors have been quick to notice the criminal implications of getting it wrong!

One of the main areas of confusion has been the fact that membership of outside bodies no longer needs to be declared on the form. Therefore, some Councillors have assumed that they no longer need to make declarations at meetings when business affecting their outside bodies arises – this is not the case and all the familiar past controls still apply. For example, a Councillor who is also Chairman of the Village Hall Committee must still declare a personal and prejudicial interest when he/she is present for the Council's consideration of grant aid to the Village Hall, even though registering his chairmanship is not required information on the Register form.

It may help if Councillors and Clerks think of the new DPI category as one which sits on top of – but certainly does not replace – the personal and prejudicial interests/tests with which we have all become familiar over the last few years. Perhaps the main intention of the DPI category and the Register form is to emphasise to Councillors that the interests that are entered on that form are the most important to declare and, unless a dispensation exists, you must have no involvement whatsoever with any related Council business, whether at or outside formal meetings.

The Register of Interests form has also raised a number of questions. Here are some answers to the most frequently raised points:-

I only need to include the title of my employment/profession.

Wrong. You must enter sufficient detail so that others can identify your employer. So 'Architect' is not acceptable but 'Architect employed by ABC Design Co. Southampton' is.

For business privacy reasons, I do not want to include all the contracts I have with other people in the village.

You don't have to. Only those contracts you have with the Parish Council need to be declared, again in sufficient detail so that their nature is clear.

I live in a farm workers cottage as part of my job (or I only rent my property) so my answer is 'n/a' to the 'Land' question.

Wrong. A tenancy (whether as part of a job or not) still gives a beneficial interest in land and so the address of the property must be declared.

As my property is entered on the form, I cannot take any part whatsoever in consideration of any issues which relate to sites which are close by.

Partly true – but what is 'close by'? Immediately next door or directly across the road could be a clear DPI if it affects your own property, but what should be the decision as you get further away?

Distance is certainly one factor, but much depends on the exact circumstances e.g. geography, residential make-up of the area, proposed use etc. If the development cannot be seen (and/or heard where relevant) from anywhere in the Councillors property, then that satisfies one test of 'not being so close'. From that, you can then ask (assuming neither visible nor audible) would the development generate a significant increase in pedestrian or vehicular traffic going past the Councillor's property, which may adversely affect values, general amenity etc? If 'no', then this again dilutes the 'closeness' argument a little further.

Of course, certain types of activity can be seen and/or heard enough to make an adverse impact, but not be in the immediate vicinity e.g. flight paths or motorway noise. In these cases, it is likely that a large number of parishioners may be affected in the same way and that again reduces the need to declare a DPI.

So those are the kind of tests which we would apply, plus of course what the reasonable person (knowing all the relevant facts) would think. There is also the opportunity to avoid all doubt and for the Council to issue a dispensation, if appropriate.

These decisions are rarely clear cut and it is not possible to list all the questions we have been asked under this heading, but being as objective as possible and applying the above tests should help.

What is the penalty for a Councillor who does not complete and return the Register form within the 28 day period or refuses to complete it at all?

Anyone not completing the Register form within 28 days of the interest arising at a meeting, or within 28 days from being elected at the next election, is potentially at risk of criminal prosecution.

However, the Government has advised that all Councillors should complete the Register and failure to complete the form would be a breach of the Code and thereby risk complaint and possible public censure. The Parish Council would need to consider the matter in public if forms are not completed.

Stephen Whetnall
Monitoring Officer

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Head of Democratic Services

January 2013

1. Minor change to the Local Code to take account of Dispensations being granted by the Parish Council

In Part 3 para 1.5 and Part 9 para 1.1 delete references to Winchester City Council's Standards Committee.

Replace with "the Parish Council".

2. Suggested paragraph for Standing Orders on declarations of interests

INTERESTS OF MEMBERS UNDER THE CODE OF CONDUCT

- (1) If any Member has a
 - (a) disclosable pecuniary interest
 - (b) personal interest or
 - (c) personal and prejudicial interest

in a matter coming before a meeting, this must be declared in accordance with the Code of Conduct before the matter is discussed, or if later, as soon as the Member is aware that the interest is affected by the matter under discussion. The need to make the declaration arises whether or not the interest appears on the Register of Interests Form.
- (2) When a Member has made such a declaration of interest, the Member shall give details of the interest and, if appropriate, explain why he/she is entitled to remain in the room under the Code of Conduct. The Clerk shall record such details and reasons in the minutes.
- (3) If the Code of Conduct requires the Member to leave the room where the meeting is taking place, then the Member shall leave the room in accordance with those provisions. The Clerk shall record such details and reasons in the minutes.
- (4) This Procedure Rule shall apply to any Member actually present in the meeting room while the interest is under consideration, whether as a member of the body or in some other capacity.
