

STANDARDS COMMITTEE

24 June 2013

STANDARDS ISSUES - UPDATE

REPORT OF CHIEF OPERATING OFFICER

Contact Officer: Stephen Whetnall/Chris Ashcroft Tel No: 01962 848220/848284  
swhetnall@winchester.gov.uk or cashcroft@winchester.gov.uk

RECENT REFERENCES:

ST95 – Dispensations – 28 January 2013

EXECUTIVE SUMMARY:

This report updates Members on a number of issues and outlines the future work programme.

RECOMMENDATIONS:

1. That the Independent Persons and Parish Representatives be requested to undertake further evaluation of committee meetings to ascertain the level of compliance with the Code of Conduct and other guidance.
2. That it be agreed that Members no longer need to declare a Disclosable Pecuniary Interest in respect of participating in the Council's consideration of setting the Council Tax.

3. That Minute 511.2 of the Standards Committee held on 28 January 2013 be rescinded and replaced with the following:

“That the Chief Operating Officer, in consultation with the Chairman, be authorised to grant dispensations in relation to disclosable pecuniary interests in respect of Council House tenancies. “

4. That the Chief Operating Officer, in consultation with the Chairman, be authorised to grant dispensations in relation to Discosable Pecuniary Interests due to membership or employment in other public offices, until the expiry of their period of office as a District Councillor.

5. That the Committee considers whether there are any other issues which they would wish to see included in the work programme for 2013/14.

## STANDARDS COMMITTEE

24 June 2013

### STANDARDS ISSUES - UPDATE

#### REPORT OF CHIEF OPERATING OFFICER

##### DETAIL:

#### 1 Complaints 2012/13

- 1.1 One complaint about a City Councillor and four complaints about Parish Councillors were received during the past Municipal Year. One of the parish complaints involved three Parish Councillors and was the subject of an investigation by the Monitoring Officer; the conclusion was that the facts of the case did not justify further action.
- 1.2 The remainder of the complaints did not proceed after either the Assessment or Review stage.

#### 2 Register of Interest Forms – Return Rate

- 2.1 All City and Parish Councillors were required to complete a new form, following adoption of the revised Code of Conduct in September 2012. City Councillors had to complete the forms again at the start of this Municipal Year, but as this good practice is discretionary, parishes are not compelled to do the same (and most do not).
- 2.2 The return rate for City Councillors will be updated at the meeting.
- 2.3 There are still 7 of the 43 Parish Councils in the District that have yet to submit their Parish Councillor forms and the Parish Clerks are receiving frequent reminders.

#### 3 Training

- 3.1 Because of the introduction of the revised Code of Conduct on 27 September 2012, the usual Probity and Ethics training was delayed and two sessions on the revised Code were held on 10 and 17 October 2012. 40 Members attended.
- 3.2 A similar session for Parish Councils was held on 8 November 2012 with 28 attendees.
- 3.3 Training sessions for 2013 for both City and Parish Councillors will be arranged during the Autumn.

#### 4 Hampshire & Isle of Wight LA Forum – Uniformity of Codes

- 4.1 Through the above Forum, the Hampshire Fire and Rescue Service was keen to promote a Code of Conduct which was agreeable to all authorities in the County.
- 4.2 It was recognised in 2012 that the short timescale for implementation of the new Codes (following the late publication of the regulations under the Localism Act 2011) meant that each authority would have to devise its own Code. It was also accepted that differing approaches would be taken by authorities as to whether it was desirable to go beyond the basic legal minimum requirements. However, it was hoped that there could be a later review to see whether there was any common ground. The Monitoring Officer for the Fire Authority is collating responses to see whether there are common themes emerging and a report will be made to the Hampshire & Isle of Wight LA Forum.
- 4.3 The outcome will be reported to a future meeting of this Committee.

#### 5 Future Work Programme

- 5.1 Firstly, there is the 'Monitoring of Committee Proceedings by Independent Persons and Parish Representatives'. This process has been carried out every two years and another exercise is now due.
- 5.2 Meetings of Cabinet, The Overview & Scrutiny Committee and Planning Development Control Committee have been monitored in the past, being those that generate the highest levels of public interest. The monitoring process involves one each of the Independent Persons and Parish Representatives (in various combinations) attending selected committee meetings as members of the public. They are not 'mystery shoppers', as this Committee decided that everyone at the meeting to be monitored should be aware of their attendance and their role, which was to observe proceedings from the public viewpoint and make comments regarding the observance by Members of the Code of Conduct and other protocols.
- 5.3 The exercise also provides a good opportunity to comment on a number of general 'housekeeping' issues, such as meeting facilities, signage and acoustics. The feedback has always proved useful and highlighted areas for improvement, many of which have since been addressed. The Committee is requested to consider whether it wishes similar visits to be carried out in the forthcoming cycles of meetings.
- 5.4 An updated copy of the questionnaire is attached as Appendix 1 to this report and, if the above is agreed, comments about the questions asked and possible changes would be welcomed.

5.5 Secondly, the Local Government Association has issued further guidance regarding 'Probity in Planning for Councillors and Officers'. The content of the document is being assessed and an updated version of the Council's Planning Protocol will be submitted to Members shortly, which will take account of any necessary changes, (including the necessary updates on declaring interests and pre-determination).

5.6 It is also proposed that the procedures adopted for dealing with complaints under the new Code are reviewed in the Autumn, in the light of experience.

5.7 The training for 2013/14 has been covered above. The remaining work for the year is likely to be responding to any further Government directives about the Code and, of course, dealing with any complaints received.

## 6 New Guidance from the Department of Communities and Local Government

6.1 The DCLG issued new guidance on Members' interests in March 2013 (attached as Appendix 2). This has already been drawn to Members attention, but it is appropriate that it should be considered at this Committee.

6.2 The guidance was issued because of differing interpretations being taken across the country on aspects of the new legislation.

6.3 From the City Council's viewpoint, our own practices are substantially in line with the guidance. The only point to consider is our current practice (in common with many other authorities) that Councillors should declare a Disclosable Pecuniary Interest in respect of their own property when considering the Council tax debate - and then rely upon a dispensation granted by the Monitoring Officer on behalf of this Committee to speak and vote (Report ST95 refers). This was to avoid the potential risk of complainants raising non-compliance with the technical wording of the legislation. However, the specific guidance covers the point (see page 6) and the view of the Monitoring Officer is that it would be safe for Members to rely on this DCLG statement, despite the ambiguity in the drafting of the 2012 Regulations.

6.4 Interestingly, the DCLG has issued a separate letter confirming that receipt of Members Allowances in another authority (eg the County Council) is a Disclosable Pecuniary Interest under the Regulations. It goes on to suggest that councils should deal with the matter by granting dispensations. This is the practice already adopted at Winchester.

## 7 House of Commons Library Article

7.1 Attached as Appendix 3 is an article produced in April 2013 as a general clarification of the revised Standards regime. It provides a Parliamentary perspective of the current position.

## 8 Dispensations

- 8.1 As set out in paragraph 6.3 above, there has been an important clarification regarding dispensations relating to Members participating in the Council's consideration of setting the Council Tax, due to their interest in their own property. It has now been confirmed that Members no longer need to declare a Disclosable Pecuniary Interest and, therefore, a dispensation is not required.
- 8.2 The other aspects of the policy adopted following consideration of Report ST95 still stand. This includes arrangements to give dispensations at Council Tax debates for personal and prejudicial interests relating to outside "not for profit bodies" and for short term dispensations.
- 8.3 However, for clarification, the wording of Resolutions 511.1 and 511.2 approved under Report ST95 now needs to be revised as set out in the current recommendations. This also allows for longer term dispensations to be granted in respect of Disclosable Pecuniary Interests linked to membership or employment of other public bodies. The current delegations only permit interim six month delegations to be granted under delegated powers, with extensions coming to the Committee for approval. Following the DCLG clarification that this is an appropriate approach, the delegation can now be extended to cover the entire period of office.

### OTHER CONSIDERATIONS:

#### CORPORATE STRATEGY (RELEVANCE TO):

An Efficient and Effective Council

#### RESOURCE IMPLICATIONS:

As previously highlighted to Members, local investigations/determinations will need to be carefully monitored, to see if there is a need for additional consultancy support. This may be the case if existing staff have a potential conflict of interest through earlier involvement in the case in question. It could also arise if the volume of work referred to is significant. The base budget is £10,000 per annum.

#### RISK MANAGEMENT ISSUES

None

#### BACKGROUND DOCUMENTS:

None

#### APPENDICES:

- Appendix 1 - Monitoring of Proceedings Questionnaire
- Appendix 2 - Openness and Transparency on Personal Interests (DCLG)
- Appendix 3 - The Standards Regime in England (House of Commons Note)



**STANDARDS COMMITTEE - QUESTIONNAIRE FOR MONITORING MEETINGS**

**(Please circle the best description)**

1. How clear was the signage at the Guildhall to indicate where and when the meeting would be held?

Excellent / Good / Average / Poor / Very Poor

Further  
Comments.....  
.....  
.....  
.....

2. To what extent was it clear who the Councillors, the officers and (if appropriate) the applicants were?

Completely / Quite well / Partly / Not at all

Further  
comments.....  
.....  
.....  
.....

3. How good were the facilities in the meeting room? (eg seating and, if appropriate, monitors, projector screens etc)

Excellent / Good / Average / Poor / Very Poor

Further  
comments.....  
.....  
.....  
.....

4. Were copies of the agenda available on the public seating?

Yes / No

Further  
comments.....  
.....  
.....

5. To what extent did the agenda sheet clearly explain the process of public participation?

Completely / Quite well / Partly / Not at all

Further  
comments.....  
.....  
.....

6. How clearly was the opportunity for public participation announced at the beginning of the meeting?

Completely / Quite well / Partly / Not at all

Further  
comments.....  
.....  
.....

7. Were you asked directly by the Committee Administrator or the Chairman if you wanted to speak during public participation?

Yes / No

Further  
comments.....  
.....  
.....



8. If there was public participation, how did the Chairman deal with it and to what extent were the questions/concerns answered fairly?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

9. How well could both the public speakers and the Councillors be heard?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

10. Councillors who are not members of the Committee can sometimes contribute to the debate, including Portfolio Holders, Ward Members and the Leader. If applicable, how well was this fact communicated to the public?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

11. Following on from question 10 above, and specifically relating to the Planning Committee, to what extent was the Planning Protocol followed (eg: Members of the Committee not voting because of perception of bias/pre-determination or choosing to speak as a Ward Member to advocate a particular view)?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

12. If any Councillors declared an interest, how well was it made clear what the actual interest was (i.e. Disclosable Pecuniary Interest, personal or personal & prejudicial and a brief mention of the circumstances)?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

13. Did any Member leave the room after declaring an interest, perhaps after making a statement under Public Participation as permitted by the Code of Conduct?

Yes / No

Further comments.....  
.....  
.....  
.....

14. When items were debated, how well did the Chairman achieve a fair and balanced discussion?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

15. How well did the Chairman summarise the debate prior to a decision being made?

Completely / Quite well / Partly / Not at all

Further comments.....  
.....  
.....  
.....

16. How clearly did you understand the actual decision reached by the meeting on each item?

Completely / Quite well / Partly / Not at all

Further  
comments.....  
.....  
.....  
.....

17. Overall, to what extent was the debate and decision easy to follow for the lay person?

Completely / Quite well / Partly / Not at all

Further  
comments.....  
.....  
.....  
.....

**OTHER COMMENTS:**

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....



Department for  
Communities and  
Local Government

## Openness and transparency on personal interests

A guide for councillors

© Crown copyright, 2013

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

Any enquiries regarding this document/publication should be sent to us at:

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

March 2013

ISBN: 978-1-4098-3604-9

# 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 2011<sup>1</sup>.

## 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.<sup>2</sup>

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

---

<sup>1</sup> 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.

<sup>2</sup> 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).

- the Broads Authority
- 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.<sup>3</sup>

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.

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

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

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

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. 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 disclose<sup>5</sup> 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 financial interests they might have (for example trust funds, investments, and assets including land and property).

---

<sup>5</sup> 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.



## 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 of 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 or 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.



## Local government: the standards regime in England

Standard Note: SN/PC/05707

Last updated: 16 April 2013

Author: Mark Sandford

Section: Parliament and Constitution Centre

---

The Government announced in its *Programme for Government* in May 2010 that the "Standards Board regime" would be abolished. This was provided for by the *Localism Act 2011*. Standards for England (formerly the Standards Board) was accordingly abolished on 1 April 2012. The remaining provisions of the *Localism Act*, including the introduction of a criminal offence of deliberately withholding or misrepresenting a disclosable pecuniary interest, and allowing for local codes of conduct, were brought into force on 1 July 2012. This note discusses the new regime.

The new standards arrangements replace the Labour Government's ethical framework for local councillors that was introduced by the *Local Government Act 2000* and amended by the *Local Government and Public Involvement in Health Act 2007*.

The standards regime for Wales is a devolved matter and therefore is not covered by these changes.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to our general terms and conditions which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

## **Contents**

<b>1</b>	<b>Abolition of the Standards Board regime</b>	<b>3</b>
<b>2</b>	<b>The Localism Act</b>	<b>4</b>
2.1	Duty to promote and maintain high standards and the code of conduct	4
2.2	The independent person	5
2.3	Registration of interests	5
2.4	Disclosable pecuniary interests	6
2.5	The role of local authorities	9



## 1 Abolition of the Standards Board regime

The Coalition Government's *Programme for Government* said that "We will abolish the Standards Board regime". This was a long-standing Conservative commitment. The *Localism Act 2011*, which was given Royal Assent on 15 November 2011, implemented this policy commitment.<sup>1</sup> Measures included:

- The abolition of Standards for England (previously Standards Board for England)
- A requirement to promote and maintain high standards of conduct
- Local codes of conduct and local responsibility for acting upon possible infringements
- Requirements concerning the registration and disclosure of pecuniary and other interests
- The creation of a new criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests

The provisions of the Act apply to "relevant authorities", which include a county council in England, a district council, a London borough council, a parish council, and the Greater London Authority.

Standards for England was formally abolished from 1 April 2012 in accordance with the *Localism Act 2011 (Commencement No. 4 and Transitional, Transitory and Saving Provisions) Order 2012*.<sup>2</sup> Other measures were brought into force on 1 July as a result of the *Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012*.<sup>3</sup> A DCLG press release stated:

These new measures, outlined in the Localism Act, will replace the bureaucratic and controversial Standards Board regime, which ministers believe had become a system of nuisance complaints and petty, sometimes malicious, allegations of councillor misconduct that sapped public confidence in local democracy.<sup>4</sup>

The Committee on Standards in Public Life expressed concern that local authorities were not prepared for the new regime:

The Committee has significant concerns about the inherent robustness of the new arrangements. We welcome the introduction of a mandatory requirement for local authorities to adopt a local code of conduct based on the seven principles of public life. But the Committee has consistently argued that codes need to be supported by independent scrutiny to support internal systems for maintaining standards and by the promotion and reinforcement of standards. Guidance and training and the application of appropriate sanctions when those standards are breached are all crucial.

The reliance of the new arrangements on relatively modest sanctions and significantly reduced independent input already carries inherent risks. These risks will be compounded unless Leaders and elected mayors implement the new arrangements in

---

<sup>1</sup> For more information see Library Research Paper 11/02, *Localism Bill: local government and community empowerment*, 11 January 2011

<sup>2</sup> SI 2012/628

<sup>3</sup> SI 2012/1463

<sup>4</sup> *New rules to ensure greater town hall transparency*, DCLG press release, 28 June 2012

a timely and effective manner. Unless local authorities have independent persons in place and they are seen to be effective, the new system will lack credibility and is unlikely to command public confidence.<sup>5</sup>

The Secretary of State, Eric Pickles, wrote in response to the Committee's chairman, Sir Christopher Kelly, setting out the steps which the Government had taken and noting also that the Department would be undertaking a post implementation review of the policy in three to five years time.

## **2 The Localism Act**

### **2.1 Duty to promote and maintain high standards and the code of conduct**

Section 27 of the Act requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Relevant authorities are listed in the Act and include:

- (a) a county council in England,
- (b) a district council,
- (c) a London borough council,
- (d) a parish council,
- (e) the Greater London Authority,
- (f) the Metropolitan Police Authority.

There is considerable local power to determine how to do this, but it must be done within the context of a code of conduct – also to be determined locally.

A model code of conduct was introduced as a result of the *Local Government Act 2000* and updated in 2007. The *Localism Bill* originally removed the requirement for local councils to maintain a code of conduct, instead making it a voluntary matter. However, amendments made to the Bill in the House of Lords require councils to maintain a code of conduct which must be based on the Committee on Standards in Public Life's seven principles of public life.

In accordance with the legislation, therefore, there will no longer be an 'official' model code. Instead, councils must determine whether they want to amend or replace the existing code of conduct; and how they fulfil the duty in the Act of promoting and maintaining high standards of conduct.

DCLG published an illustrative text of what a code of conduct might look like.<sup>6</sup> A DCLG press release stated:

Today Mr Neill published an illustrative text that councils can, if they choose, use as a basis for their new local code of conduct. He has also written to council leaders to remind them of this new opportunity to raise the bar on local standards.

The new code is a matter for local determination, but the Department is publishing an example code illustrating what a new code might look like. By releasing councils from the old regime of prescriptive uniform codes councils will be able to ensure that their

---

<sup>5</sup> *New standards regime for local authorities is not ready and risks public confidence*, Committee on Standards in Public Life press notice, 28 June 2012

<sup>6</sup> *Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity*, DCLG, 11 April 2012

own codes encourage freedom of speech and cannot be used to silence or discourage conscientious councillors from whistle blowing on misconduct.<sup>7</sup>

The Local Government Association also drafted a model code of conduct, as did the National Association of Local Councils (NALC).<sup>8</sup>

The Act requires local authorities to have in place mechanisms to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegations may be made. In a letter to all local authority leaders the then Minister, Robert Neill, said:

All councils now have the opportunity to make a clean break from the bureaucratic standards arrangements of the old regime which so often led to petty or politically motivated complaints. I am sure you and your council will wish to make the most of this opportunity and put in place simple, fit-for-purpose arrangements in which all can have confidence.<sup>9</sup>

## 2.2 The independent person

Section 28(7) of the Act requires local authorities to appoint at least one independent person to advise the council before it makes a decision on an allegation. There are restrictions on who can be appointed as the independent member; in general the independent person cannot be a councillor, officer or their relative or close friend.<sup>10</sup> Former members of standards committees can be appointed as the independent person until 30 June 2013 as part of transitional arrangements to the new regime.<sup>11</sup>

## 2.3 Registration of interests

The *Localism Act 2011* strengthens requirements on members to register and disclose interests, as described in the explanatory notes:

Section 29 requires monitoring officers of relevant authorities to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on their authority's website. It also requires the monitoring officer of a principle council to make the register of members' interests for parish councils in its area available for inspection and to publish it on the website of the principal council. In addition, parish councils are required to publish the register on their own website, if they have one.

Section 30 requires members of relevant authorities to notify the monitoring officer of any disclosable pecuniary interests of them or a spouse or civil partner they live with, within 28 days of taking up office. The section allows the Secretary of State to make regulations defining a "disclosable pecuniary interest", and requires the monitoring officer to enter any notified disclosable pecuniary interest in the authority's register, as well as any other interest notified to them, whether or not it is pecuniary.

Section 31 requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest – see section 32), at a meeting or if acting alone, where any matter to be considered relates to their

---

<sup>7</sup> *New reforms will stop town hall corruption and culture of malicious complaints*, DCLG press release, 12 April 2012

<sup>8</sup> *New code of conduct for parish and town councils*, NALC media release, 20 June 2012

<sup>9</sup> *Letter to all local authority leaders from Bob Neill, Parliament Under Secretary of State*, DCLG, 28 June 2012

<sup>10</sup> There are transitional arrangements in place as described in the *Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) (Amendment) Order 2012*.

<sup>11</sup> *Letter to all local authority leaders from Bob Neill, Parliament Under Secretary of State*, DCLG, 28 June 2012

interest. If the interest is not already registered, it requires members to register it within 28 days. The monitoring officer must then enter the interest in the authority's register. It prohibits a member from participating in discussion or voting on any matter relating to their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations – see section 33). Local authorities may also, should they so wish, amend their standing orders to require a member to leave the room when a matter in which they have a disclosable pecuniary interest is debated or voted on.

Further provisions allow registered interests to be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family. A relevant authority, on receipt of a written request, may also grant dispensations provided certain conditions are met.<sup>12</sup>

Section 34 of the Localism Act makes it a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests. It is also a criminal offence to take part in council business at meetings, or act alone on behalf of the council, when prevented from doing so by a conflict caused by disclosable pecuniary interests.

It empowers the magistrates' court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a member of a relevant authority for up to five years. It extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions. The then Local Government Minister, Robert Neill, commented:

... "Instead of having hundreds of expensive and frivolous investigations hanging over their heads local councillors will be free to get on with the job of getting the best for their local area. But far from letting councillors off the hook without any checks we are ensuring that they conform to the highest standards and anyone who abuses their position for personal gain can expect to face the full force of the law."<sup>13</sup>

This part of the Act came into force on 1 July 2012 in accordance with the *Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012*.

## **2.4 Disclosable pecuniary interests**

The *Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012*<sup>14</sup> lists in Schedule 2 the disclosable pecuniary interests specified for the purposes of the Act. These are as follows:

Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
--	---

---

<sup>12</sup> Localism Act 2011: Explanatory Notes

<sup>13</sup> *New reforms will stop town hall corruption and culture of malicious complaints*, DCLG press release, 11 April 2012

<sup>14</sup> SI 2012/1464

Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M [i.e. the member] in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	<p>Any beneficial interest in land which is within the area of the relevant authority.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</p>
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) 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 the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

A press release from DCLG said:

3. The regulations set out the rules for disclosure and registration of pecuniary interests, which may limit a councillor's involvement with the business of the authority, where failure to comply with the rules without reasonable excuse is a criminal offence, punishable with a fine of up to £5,000 and disqualification from office for up to five years.

4. Pecuniary interests cover the member's 'employment, office, trade, profession or vocation', any 'sponsorship' of the member, including contributions towards their election expenses, any 'contracts' between the member and the authority, any 'land' the member has an interest in and lies within the area of the authority, any 'licences' the member holds to occupy land in the area, any 'corporate tenancies', and certain 'securities' the member may hold.

5. The new arrangements explicitly state any payment or financial benefit from a trade union must also be declared.

6. The new arrangements reflect the Government's policy that elected representatives should continue to declare financial interests in an open and transparent way, to avoid conflicts of interest especially on issues such as planning applications or financially benefiting from the issuing of council contracts.<sup>15</sup>

The updated guidance, published in March 2013, clarified that the requirement on councillors to pay council tax does not constitute a disclosable pecuniary interest for the purposes of the legislation. Councillors owning property in the council area would be expected to declare this as an interest, but it is not a disclosable pecuniary interest for the purposes of setting council tax and therefore would not require a councillor to take no part in a debate on that issue, or to seek a dispensation from the council to take part.

The provisions apply to either an interest of the member's or an interest of member's spouse, civil partner or partner. However, guidance issued by DCLG makes it clear that the member does not have to differentiate between their own or their spouse/civil partner/partners interests or to name them:

**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.<sup>16</sup>

The guidance also makes it clear that "All sitting councillors need to register their declarable interests. 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."<sup>17</sup>

The guidance also requires all registers to be published on the council's website:

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 or borough, and must be published on the district or borough council's website.

---

<sup>15</sup> *New rules to ensure greater town hall transparency*, DCLG press release, 28 June 2012

<sup>16</sup> *Openness and transparency on personal interests: A guide for councillors*, DCLG, August 2012, p4

<sup>17</sup> *Ibid* p3

Where the parish council has its own website, its register of members' interests must also be published on that website.<sup>18</sup>

However, the member's signature does not have to be published on the website.

## 2.5 The role of local authorities

The Act has also abolished the *requirement* for local authorities to have standards committees. However, principal local authorities (and other types of authority to which Chapter 7 of the Localism Act applies, and not parish or town councils) may decide to operate a voluntary standards committee (or something similar). Membership of any such committee would have to follow the political balance rules if those rules apply to their particular type of authority. Individual authorities would also determine how the independent person would work as part of their local standards arrangement. Baroness Hanham said during debate on the *Localism Bill* in the House of Lords:

I want to make it clear that whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member [i.e. the independent person] who will act outside the committee system and will have to be referred to.<sup>19</sup>

The powers of the local authority in relation to allegations are for local determination, following advice from the authority's Monitoring Officer or legal team. These powers might include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend members as this power was revoked (from 7 June 2012) by the *Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012*.

---

<sup>18</sup> Ibid p4

<sup>19</sup> HL Deb 31 Oct 2011 c1051. The legislation requires local authorities to appoint an 'independent person'. A useful discussion of some of the principles involved is provided on the website of the Association of Council Secretaries and Solicitors; see <http://www.acses.org.uk/news/standards-%E2%80%93-sanctions-and-independent-persons-press-release>.