

STANDARDS COMMITTEE

10 February 2014

REVIEW OF THE MEMBERS CODE OF CONDUCT

REPORT OF CHIEF OPERATING OFFICER

Contact Officer: Stephen Whetnall Tel No: 01962 848220  
swhetnall@winchester.gov.uk

RECENT REFERENCES:

[ST93 – Localism Act 2011 – New Code of Conduct](#) – 9 September 2012

[ST95 – Dispensations](#) – 28 January 2013

[ST101 – Openness and Transparency on Personal Interests – A Guide for Councillors](#) – 24 October 2013

EXECUTIVE SUMMARY:

The current Code of Conduct was adopted in September 2012, following the changed legislative requirements in the Localism Act 2011.

Hampshire and Isle of Wight Local Authorities (HIOWLA), the regional local government association, has recently produced guidance for authorities to consider on the operation of the Code of Conduct and suggested some core requirements that a Code should contain.

RECOMMENDATIONS:

That the Committee assesses the Winchester Code against the core HIOWLA requirements, and considers whether it wishes to recommend to Council any changes to the Code of Conduct.

## STANDARDS COMMITTEE

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### REVIEW OF THE MEMBERS CODE OF CONDUCT

#### REPORT OF CHIEF OPERATING OFFICER

#### DETAIL:

##### 1 Introduction

- 1.1 The current Code of Conduct was adopted in September 2012. It is attached as Appendix 1. It replaced interim arrangements that were in place from the statutory date of 1 July 2012.
- 1.2 The Code complied with the minimum requirements of the Localism Act 2011 regarding disclosable pecuniary interests and the Register of Members Interests.
- 1.3 The Council added its own local additional provisions. This was permitted by the Act and Department of Communities and local Government (DCLG) Guidance. The additions related to personal and prejudicial interests, in a similar form to those which applied under the former compulsory Code which applied until July 2012. This was because it was considered that it was inappropriate for Members to be decision makers in some situations where a disclosable personal interest was not involved. Examples would include contracts or planning applications involving close family members or friends. Another common situation would be where the Member was on the Board of an organisation applying to the Council for a grant.
- 1.4 The Council also opted in certain cases to require members with disclosable pecuniary interests or personal and prejudicial interests to leave the room while an item was discussed.
- 1.5 The additional provisions were included in the interests of transparency and to avoid conflicts of interest.
- 1.6 The Council recommended a Code with substantially the same provisions to Parishes. With the exception of New Alresford Town Council, which made a minor local modification, the parishes adopted the Code in the recommended form.

##### 2. Recommendations of HIOWLA

- 2.1 At the time the Localism Act came into force, the Hampshire and Isle of Wight Local Authorities (HIOWLA), the regional local government association, considered whether it should recommend a common code for

Hampshire authorities. This had initially been raised by the Hampshire Fire and Rescue Authority because of the potential difficulty for the public and Members in understanding why different approaches had been taken by different authorities. Some Members are on more than one authority and would have to comply with different code provisions in similar circumstances.

2.2 HIOWLA decided that it was impracticable to do anything in 2012 because authorities were under a statutory obligation to adopt new provisions in a short timeframe and work was too far advanced for a common approach to be agreed. However, it was suggested that a later review be undertaken to assess practical experience.

2.3 That review is attached as Appendix 2. Because the various authorities had taken rather different approaches to their codes, HIOWLA decided to recommend Option 2 in its report - to ensure that all authorities met certain minimum requirements. At the meeting a number of authorities supported this approach, as their own Code arrangements had now become locally understood and were working – and there was not a general desire to work towards a common Code at this stage.

### 3. Comparison to Winchester's Code

3.1 The recommended core provisions of a code are set out in the Appendix to the HIOWLA document (marked Appendix 2A).

3.2 Winchester has personal interests in its Code in the same way as recommended in paras 1.1 to 1.3 of the Appendix 2 A to the HIOWLA document. However, the WCC Code has an additional category of prejudicial interest which prevents participation in circumstances where there is a potential conflict of interest. It clearly defines the circumstances in which those situations could arise. It goes beyond the minimum HIOWLA document requirement to simply to declare such interests, and leaving it open to a member to still participate in the decision.

3.3 The Winchester requirements on entering Gifts and hospitality above £50 on the Register of Interests are the same as the HIOWLA recommendations (Para 2.1 of their Appendix 2A).

3.4 The core HIOWLA recommendations (Para 3.1 of their Appendix 2A) are that a Member should leave the room when a disclosable pecuniary interest has been declared, unless a dispensation has been granted. The Winchester Code goes beyond this in situations where a prejudicial interest has been declared and there could be a conflict of interest e.g. financial and planning matters affecting friends, family or voluntary bodies where the member is on management body. The local exception still allows Members an opportunity to comment in any public participation session, but they have to leave before the debate and decision stage. This was agreed as being a reasonable approach to transparency and followed the national practice before the Localism Act 2011 came into force.

- 3.5 The recent updated Guidance from the DCLG (Report [ST101](#) refers) encourages councils to consider additional local variations to the Code, beyond the minimum statutory requirements. The Winchester Code follows this approach.
- 3.6 The Winchester Code also contains the provisions referred to in HloWLA's option 3.
4. Conclusion
- 4.1 In Winchester, the transition from the old to the new arrangements has been relatively smooth. The opportunity to consider dispensations to allow Members to participate has allowed some flexibility where there is an overlap with some other public office, for example. Reports [ST95](#) and [ST101](#) give some examples.
- 4.2 Given current experience, it is suggested that the existing Winchester arrangements be retained. Although, the text of Winchester's Code is longer than some others, the additional use of the section on Prejudicial Interests gives clear guidance as to when a conflict of interest could arise which should prevent participation in a decision. The fact that closer definition is given in the Winchester Code enables more consistency of approach by both Members and Officers as to how the Code should be interpreted. Even if the Winchester Code had not given this more detailed guidance, it would not necessarily mean that a Member would still be able to attend and participate in decisions which did not come within the statutory definition of a disclosable pecuniary interest. This is because the case law against bias and predetermination would still have to be considered. Following the more detailed guidance in the Winchester Code should assist in preventing this problem from arising.

#### OTHER CONSIDERATIONS:

##### 5. COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 5.1 The review of the Code forms a part of the Council's wider Governance Review – to ensure that's its arrangements are up-to-date and fit for purpose.

##### 6. RESOURCE IMPLICATIONS:

- 6.1 None directly – unless significant changes are made to the Code which would affect allocation of staff time from other projects and require additional Member training.

##### 7. RISK MANAGEMENT ISSUES

- 7.1 The Winchester Code exceeds the core requirements recommended by HloWLA and minimises risk by providing additional provisions to manage potential conflicts of interests.

BACKGROUND DOCUMENTS:

None

APPENDICES:

Appendix 1 – Current Winchester Members Code of Conduct.

Appendix 2 – HIOWLA Report – Options for a Pan Hampshire Code – 22 November 2013.

Appendix 2A – HIOWLA Minimum Recommendations.



## **CODE OF CONDUCT FOR MEMBERS**

### **Part 1: General Provisions and Interpretation**

#### **1. Introduction**

This Code of Conduct is adopted by the City Council pursuant to its statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Council. This Code applies to all Members and Co-opted Members of the Council.

This Code is based on and is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership as referred to in the Localism Act 2011.

In the interests of transparency and openness, and in accordance with the requirements of the Localism Act 2011, a copy of the Register of Members' Interests is published on the Council's website, and is available for public inspection at the City Council's offices at all reasonable hours.

#### **2. Scope**

This Code applies to all Members and Co-opted Members of the Council when acting in their official capacity, or when giving the impression that they are acting as a representative of the Council. References in this Code to "Member" shall also be interpreted to include co-opted Member.

Where a Member is a member of more than one local authority, but acting on behalf of the Council, such Member is, for the avoidance of doubt, bound by this Code of Conduct.

#### **3. General obligations of Members and Co-opted Members**

As a Member of Winchester City Council, your conduct will address the principles of the Code of Conduct by:

- 3.1 Representing the needs of residents, and putting their interests first.
- 3.2 Dealing with representations or enquiries from residents, members of communities within the administrative area of Winchester City Council and visitors fairly, appropriately and impartially.

- 3.3 Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Council's area, or the good governance of the Council in a proper manner.
- 3.4 Exercising independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties.
- 3.5 Listening to the interests of all parties, including relevant advice from statutory and other professional officers of the Council, taking all relevant information into consideration, remaining objective and making decisions on merit.
- 3.6 Being accountable for your decisions and co-operating when scrutinised internally and externally.
- 3.7 Contributing to making the Council's decision-making processes as open and transparent as possible.
- 3.8 Restricting access to information when the wider public interest, the Council's Constitution, or the law requires it.
- 3.9 Behaving in accordance with all the Council's legal obligations, alongside any requirements contained in the Council's policies, protocols and procedures relating to conduct.
- 3.10 Ensuring that when using or authorising the use by others of the resources of the Council that such resources are not used improperly for political purposes.
- 3.11 Having regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or otherwise.
- 3.12 Not knowingly doing anything which might cause the Council to breach any legislation.
- 3.13 Valuing your colleagues and Officers of the Council and engaging with them in an appropriate manner.
- 3.14 Always treating all people and organisations with respect and propriety.
- 3.15 Providing leadership through behaving in accordance with these principles.

## **Part 2: Disclosable Pecuniary Interests**

### **1. Introduction**

A disclosable pecuniary interest is an interest falling within the Schedule set out at Paragraph 3 below of:

- 1.1 Yourself; or
- 1.2 Your spouse or civil partner, or someone you are living with as if you were husband and wife or civil partners, where you are aware that that other person has the interest.

### **2. Interpretation**

In the Schedule set out at Paragraph 3 below, the following words or expressions mean as follows:

- 2.1 'the Act' means the Localism Act 2011;
- 2.2 'body in which the relevant person has a beneficial interest' means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
- 2.3 'director' includes a member of the committee of management of an industrial and provident society;
- 2.4 'land' excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;
- 2.5 'M' means a member of a relevant authority;
- 2.6 'member' includes a co-opted member;
- 2.7 'relevant authority' means Winchester City Council of which M is a member;
- 2.8 'relevant period' means the period of 12 months ending with the day on which M gives a notification of a disclosable pecuniary interest for the purposes of Section 30(1) or Section 31(7), as the case may be, of the Act;
- 2.9 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

### 3. Schedule of Disclosable Pecuniary Interests

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	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 in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	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: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (along or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either:

	<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>
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## Part 3: Registration and Disclosure of Disclosable Pecuniary Interests

### 1. Obligations

- 1.1 You must, within 28 days of taking office as a Member or Co-opted Member of the Council, notify the Council's Monitoring Officer of any disclosable pecuniary interests as defined by regulations made by the Secretary of State (as set out at Part 2 of this Code), 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.
- 1.2 You must also, within 28 days of becoming aware of any new disclosable pecuniary interest, or change thereto, notify the Council's Monitoring Officer of such new or changed interest.
- 1.3 If you have a disclosable pecuniary interest included on the Register of Members' Interests, you must disclose this interest at any meeting of the Council, its Cabinet or Committees (including joint committees and sub-committees) at which you are present. Such interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent.
- 1.4 If a disclosable pecuniary interest has not been entered onto the Council's Register of Interests, then you must also disclose the interest to any meeting of the Council, its Cabinet or Committees (including joint committees and sub-committees) at which you are present where you have such an interest in any matter being considered. Such interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent. Following disclosure of a disclosable pecuniary interest not on the Council's Register or the subject of pending notification, you must notify the Monitoring Officer of such interest within 28 days, beginning with the date of disclosure.
- 1.5 Unless a dispensation has been granted by the Standards Committee, you may not participate in any discussion of, vote on, or discharge any

function related to any matter in which you have a disclosable pecuniary interest. You must as soon as it becomes apparent that you have such an interest withdraw from the room where the meeting considering the business is being held, and must not seek improperly to influence a decision about that business. If acting as a portfolio holder you may not take any further steps in relation to the matter other than for the purpose of arranging for the matter to be dealt with otherwise than by yourself.

#### **Part 4: Registration of Gifts and Hospitality**

1. You must, within 28 days of receipt, notify the Council's Monitoring Officer of any gift or hospitality you receive, if such gift or hospitality has an estimated value of at least £50.

#### **Part 5: Non Pecuniary Interests – Personal and Prejudicial Interests**

1. Without prejudice to requirements contained at Part 3 of this Code in respect of the registration and disclosure of pecuniary interests, this Code requires that other non-pecuniary interests may still need to be declared and may affect participation in the business of the Council.
2. A declaration needs to be made in respect of personal interests for reasons of openness and transparency.
3. If that personal interest is also a prejudicial interest then there may be a conflict of interest which prevents the Member from participating in the decision.
4. For the avoidance of doubt, the statutory requirements in respect of disclosable pecuniary interests, take precedence and apply in place of the Council's additional requirements in the Code for personal and prejudicial interests.

#### **Part 6: Personal interests**

1. You have a personal interest in the business of the Council when it relates to or is likely to affect:
  - 1.1 any body of which you are a member or in a position of general control or management, and to which you are appointed or nominated by the Council.
  - 1.2 any body
    - (a) exercising functions of a public nature;
    - (b) directed to charitable purposes; or
    - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);

of which you are a member or in a position of general control or management

- 1.3 any employment or business carried on by you other than for profit or gain;
  - 1.4 any person or body who employs you, or who has appointed you, other than for profit or gain;
  - 1.5 the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50 in the last three years;
2. You also have a personal interest in the business of the Council when a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position, or the well-being or financial position of a relevant person (as defined at paragraph 3) below, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward within the administrative area of the Council affected by the decision;
3. In Paragraph 2, a “relevant person” is:
- 3.1 your spouse or civil partner, or someone you are living with as if you were husband and wife or civil partners, where you are aware that that other person has the interest; or
  - 3.2 another member of your family, or any person with whom you have a close association, where you are aware that that other person has the interest; or
  - 3.3 any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
  - 3.4 any person or body in whom to the Member’s knowledge such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000: or
  - 3.5 any body of a type described in paragraph 1.1 or 1.2 above.

## **Part 7: Disclosure of Personal Interests**

- 1.1 Subject to paragraphs 1.2 to 1.5 below, where you have a personal interest in any business of the Council you must disclose this interest at any meeting of the Council, its Cabinet or Committees (including joint committees and sub-committees) at which you are present. Such interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent.

- 1.2 Where you have a personal interest in any business of the Council which relates to or is likely to affect a person described in Part 6 paragraphs 1.1 or 1.2 (a) above, you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- 1.3 The requirement to declare a personal interest only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 1.4 Where you have a personal interest in any business of the Council and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision (portfolio holder decision notice) records the existence and nature of that interest.
- 1.5 In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## **Part 8: Prejudicial Interests**

### **1. Definition of Prejudicial Interest.**

Subject to paragraph 2 below, where you have a personal interest in any business of the Council, you also have a prejudicial interest in that business when the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

### **2. Limitation on extent of prejudicial interests**

- 2.1 You do not have a prejudicial interest in any business of the Council where that business does not affect your financial position, or the financial position of a body or relevant person as described in Part 6 of this Code; or
- 2.2 does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or a body or relevant person as described in Part 6 of this Code; or
- 2.3 relates to the functions of the Council in respect of
  - (a) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
  - (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of or are entitled to the receipt of such pay;

- (c) an allowance, payment or indemnity given to members;
- (d) any ceremonial honour given to Members; and
- (e) setting council tax or a precept under the Local Government Finance Act 1992.

## **Part 9: Effect of Prejudicial Interests on Participation**

- 1.1 Unless a dispensation has been granted by the Council's Standard's Committee, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a prejudicial interest (as set out at Part 7 of this Code), and must as soon as it becomes apparent that you have such an interest (save for in circumstances set out at paragraph 2.2 below) withdraw from the room where the meeting considering the business is being held, and must not seek improperly to influence a decision about that business. If acting as a single Executive member you may not take any further steps in relation to the matter other than for the purpose of arranging for the matter to be dealt with otherwise than by yourself.
- 1.2 Without prejudice to paragraph 1.1 above, where you have a prejudicial interest in any business of the Council (including any meeting of an Overview and Scrutiny Committee of the Council) you may, notwithstanding such prejudicial interest, attend such meeting for the purpose of making representations, answering questions or giving evidence relating to such business, provided members of the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- 1.3 For the avoidance of doubt the procedure in paragraph 2.2 above cannot be used by the member where the interest comes within the statutory definition of a disclosable pecuniary interest.
- 1.4 In any case where paragraph 2.2 above applies, you must withdraw from the room immediately after making representations, answering questions, or giving evidence, unless in the case of an Overview and Scrutiny Committee, the Committee invites you to remain.

## **Part 10: Sensitive Information**

- 1.1 A sensitive interest is described in the Localism Act 2011 as a member or co-opted member of the Council having an interest, and the nature of the interest being such that the member or co-opted member, and the Council'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 them, being subject to violence and intimidation.
- 1.2 A sensitive disclosable pecuniary interest or a change to such an interest need not be included on the Register of Members' Interests,

but you may state that there is an interest the details of which are withheld under S32 Localism Act 2011.

- 1.3 Within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 1.2 is no longer sensitive information, you shall notify the Council's Monitoring Officer asking that the information be included in the Register of Members' Interests.
- 1.4 Any requirements in this Code for the declaration of an interest at meetings shall be met by not giving details of the sensitive interest but by stating that you have a disclosable pecuniary interest or a personal/prejudicial interest in the matter concerned.

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**22 November 2013**

**Localism Act– Options for a Pan-Hampshire Members' Code of Conduct**

**Report of the Clerk to Hampshire Fire and Rescue Authority**

Contact: Kevin Gardner, kevin.gardner@hants.gov.uk. Telephone: 01962 847381

## **1 Summary**

- 1.1 This report follows on from a discussion at HLOWLA on 22 June 2012, when Members resolved that further work be undertaken to explore the options for a pan-Hampshire Members' Code of Conduct. The report sets out an analysis of the main options, with the advantages and disadvantages in each case, and identifies one particular option for consideration as a way forward.
- 1.2 It is not within the scope of the report to provide detailed guidance on the requirements of the Localism Act regarding Member conduct. Members are referred to the report of 22 June 2012, which included a summary of the changes introduced by the Localism Act. Where further or more detailed advice on these requirements is sought, Members should refer to their authority's monitoring officer.

## **2 Background**

- 2.1 The Localism Act 2011 has amended the arrangements governing standards of member conduct that were previously set out in the Local Government Act 2000. Local authorities, including fire and rescue authorities and national park authorities, were therefore required to put in place revised arrangements in this regard from 1<sup>st</sup> July 2012.
- 2.2 At the HLOWLA meeting on 22 June 2012, it was reported that Members of Hampshire Fire and Rescue Authority ("HFRA") had identified that there was potential scope for co-operation and collaboration between authorities in implementing some or all of these arrangements. HFRA Members had asked that this be raised within the HLOWLA arena so that such potential could be further explored.
- 2.3 HFRA comprises 25 Members – 19 Members of Hampshire County Council, and 3 Members of each of Portsmouth and Southampton City Councils. A number of HFRA Members are also members of district councils and/or parish councils. The

previous arrangements under the Local Government Act 2000 required all such authorities to adopt a code of conduct based on a statutory Model Code, with only very limited scope for variation. Under the Localism Act, it is possible for each authority to adopt a different Code. HFRA Members recognised that this could create potential for confusion, if the ethical standards to which they must adhere vary depending on the capacity in which they are acting, or which authority's meeting they are attending. It was felt that this may increase the risk of inadvertent failure to comply.

- 2.4 It was considered that the same situation and risk may arise for Members who are "double" or "triple-hatted" in other settings e.g. a district councillor who is also a parish councillor and/or a member of one of our two national park authorities. There is also the possibility that Members representing their authorities on joint committees would be subject to differing codes of conduct while engaged on essentially the same business. This may cause confusion not only for Members, but also for stake holders and members of the public.
- 2.5 The meeting resolved: "That the HIOWLA authorities expressed support for a pan-Hampshire code of conduct and that Kevin Gardner (*on behalf of the Clerk to HFRA*) would lead on the project to explore co-operation and collaboration between the HIOWLA authorities to produce a joint code to implement the requirements of the Localism Act on Members' conduct."
- 2.6 It was acknowledged that, for reasons of timing, each of the HIOWLA authorities would need to proceed to put in place their own arrangements from 1 July 2012, to ensure that they complied with the Localism Act. However, this left open the possibility of those authorities agreeing to adopt a different code, which could be a pan-Hampshire Code, at a later date.
- 2.7 There was no wish from the meeting to explore further co-operation in the form of a joint standards committee or joint arrangements for complaints handling. These aspects have not been explored further, therefore.
- 2.8 In considering the options for a pan-Hampshire Code, a period of time has been allowed for the Localism Act arrangements to bed down, to establish whether, and the extent to which, the potential confusion and perceived issues relating to "multi-hatted" members have materialised in practice. Members' experience of this will be invaluable in judging whether there is indeed a need for greater consistency in approach.
- 2.9 This paper sets out the suggested options for greater collaboration.
- 2.10 It should be noted that, in some situations, the degree to which a Member may participate in debate or voting on an item of business may be affected by common law principles relating to bias and predetermination, rather than by the requirements of their authority's Code of Conduct regarding disclosure of

interests. This position would continue to apply, unaffected by any of the proposals below. Should such an instance arise, advice should be sought from the relevant authority's own legal officers.

### **3 Option 1 – Consistent Approach to Disclosable Pecuniary Interests**

3.1 At the HIOWLA meeting on 22 June 2012, the Regulations on disclosable pecuniary interests (“DPIs”) had only recently been published, and had yet to come into force.<sup>1</sup> These are now in place and provide a basic level of commonality across all of the authorities as to the requirements upon Members for the registration and disclosure of pecuniary interests. The first option therefore involves a view that, in the light of experience in practice, this now secures a sufficient level of consistency and that no further provision is required.

3.2 The advantages of this option are:

- It strikes a balance between consistency in the key area of registration and disclosure of significant pecuniary interests, while recognising that authorities have discretion to adopt additional provisions where they consider this appropriate to local needs
- It is easy to implement, representing the status quo

3.3 The disadvantage of this option is:

- The ability for authorities to adopt additional provisions in their codes enables further requirements to be adopted on the registration and disclosure of pecuniary interests other than DPIs (e.g. gifts and hospitality), and non-pecuniary interests. This may still lead to confusion for multi-hatted members therefore, who would still need to adhere to slightly different rules on registering and disclosing interests

### **4. Option 2 – Consistent Approach to Pecuniary and Non-Pecuniary Interests other than DPIs (“Personal Interests”)**

4.1 This option goes one step further than Option 1 and would involve all authorities adopting a common set of requirements concerning registration and disclosure of those pecuniary interests that do not meet the description of a DPI, and non-pecuniary interests. Further, there could be consistency as to when a Member, who has a DPI or other interest in a matter being considered at a meeting, is required to leave the meeting room for that item.

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<sup>1</sup> The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which came into force on 1 July 2012

- 4.2 Research suggests that a common approach may be achievable here:
- 4.3 Personal Interests: A number of the Hiowla authorities already require there to be at least some registration and/or disclosure of personal interests. The Localism Act reduced the scope of interests legally required to be registered and disclosed, leaving the making of additional provision to local discretion. There is a feeling that some disclosure of personal interests remains appropriate in the handling of certain potentially sensitive types of business (e.g. planning applications, the award of grants and contracts), where reliance solely on the rules relating to DPIs would not afford a sufficient level of transparency.
- 4.4 A number of authorities regard a “personal interest” as arising in an item of business where it relates to or is likely to affect any of the following bodies of which the Member is a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 4.5 Similarly, a number of authorities provide that a “personal interest” will also arise where a decision on an item of business might reasonably be regarded as affecting the well being or financial position of the Member, a member of the Member’s family or person with whom they have a close association, more than other council tax payers, ratepayers or inhabitants of the authority’s area.
- 4.6 Based on the current range of approaches, a possible basis for a common, proportionate approach would be a requirement to disclose a personal interest orally at a meeting, where it is relevant to an item of business being considered at that meeting. There would be no requirement to enter the interest in the published register of interests, though the oral disclosure at a meeting would be recorded in the minutes of that meeting. Once the interest has been disclosed, there would be no requirement for the Member to leave the room, and the Member would be able to participate in discussion and vote on the matter. There would be no requirement to include the interest in the register of interests which is published on the web.
- 4.7 Although many of the Hiowla authorities accept the principle that there should be some registration and/or disclosure of personal interests, the detailed provisions adopted by the authorities vary. Acceptance of a need for change on the part of some authorities would be required, as the price to be paid for achieving a common Hiowla-wide approach.
- 4.8 Gifts and Hospitality: A number of authorities have adopted a requirement to register the receipt of gifts or hospitality. The general threshold of value for registration varies, between £25 and £50. It may be possible to reach agreement in principle that such a requirement should be universally adopted, with an

agreed value, say £50.

4.9 Exclusion from the Room where a Member has a DPI: In general, authorities require through their standing orders that a Member who holds a DPI in a matter being considered at a meeting should leave the room while the discussion and vote on that item take place.

4.10 The advantage of this Option 2 would be:

- All authorities would operate consistent provisions regarding all aspects of the registration and disclosure of interests, reducing risk of confusion amongst Members, and of inadvertent failure to comply with the relevant authority's code

4.11 The disadvantage of this option would be:

- It still does not address the issue of consistency in requirements concerning aspects of conduct other than registration and disclosure of interests

## 5 **Option 3 – Consistent Approach to DPI's, other Pecuniary and Non-Pecuniary Interests, and other Aspects of Conduct**

5.1 This Option involves going one step further than Option 2 by ensuring consistency in provision regarding aspects of conduct other than registration and disclosure of interests. While the precise wording may differ slightly from one authority's code to another, many currently include provision in areas such as the following:

- Treating others with respect
- Maintaining confidentiality
- Observing requirements of equalities legislation
- Upholding, and not compromising, the impartiality of officers
- Not using position as a Member to secure an advantage
- Using resources of the authority for authorised purposes, and not for political purposes

5.2 There are two ways in which greater consistency could be achieved.

5.3 **Option 3A** would involve agreeing the principles (such as those listed in para 5.1 above) which should be covered by each authority's Code, yet leave it at each authority's discretion to settle upon its own precise wording. **Option 3B** would involve agreeing the actual wording for all authorities to adopt.

5.4 The advantage of Option 3A would be that:

- There is consistency in the principles of proper conduct that members are required to observe
- There is discretion for authorities as to the style in which the requirements are expressed
- It may better facilitate agreement and adoption, as it would not be necessary to resolve issues where there are different views on detailed drafting

5.5 The disadvantage of Option 3A would be that:

- There is still some minor inconsistency in the particular requirements Members are required to observe

5.6 The advantage of Option 3B would be that:

- It achieves complete consistency across all authorities on not only the principles, but the precise details, of the requirements placed upon Members

5.7 The disadvantage of Option 3B would be that:

- It may be viewed as too prescriptive and not recognising a role for local variation to meet local needs
- It may be difficult to reach agreement.

## 6. Comment

6.1 This part of the report sets out some considerations to be borne in mind in weighing up the above options.

6.2 The experience of Members in the period since July 2012, operating within the Localism Act requirements, is key. For example, some Members may feel that the concerns expressed prior to implementation about potential confusion for “multi-hatted” members, have not materialised, or have been largely addressed by the introduction of universal statutory requirements on the registration and disclosure of DPs. To the extent that there may be some remaining inconsistency amongst authorities on other aspects of their Codes, it may be felt that this is not significant, a natural consequence of applying principles of localism, and insufficient to justify the investment of further time and resource in the development of an overly prescriptive, common Code. Where this is the view, Option 1 would provide a basis for the way forward, and would involve maintaining the status quo.

- 6.3 As the other options involve change, it should be recognised that legally it is for each local authority to adopt its own Code of Conduct<sup>2</sup> and, in doing so, to ensure that its Code is consistent with the Nolan principles<sup>3</sup> and includes such provision as it considers appropriate in respect of the registration and disclosure of pecuniary and other interests<sup>4</sup>. Where a local authority has adopted a Code of Conduct it is able to revise it, or adopt a replacement<sup>5</sup>. It is also for each local authority to decide whether its Standing Orders should provide for the exclusion of a member from a meeting, while the discussion and vote takes place on a matter in which that member has a disclosable pecuniary interest<sup>6</sup>.
- 6.4 An authority cannot therefore be required to adopt a particular Code simply because it is being adopted by neighbouring authorities. The adoption of a pan-Hampshire Code would involve each authority voluntarily recognising the value that was added by having a Code that shared the same essential characteristics as those of neighbouring authorities.
- 6.5 It may therefore facilitate the reaching of voluntary agreement if the adopted solution comprises a core set of common principles, yet builds in some local discretion for authorities to supplement these where it considers necessary to meet local needs.
- 6.6 Where it is felt that a middle line is required, Options 2 and 3A may be attractive: Option 2 achieves consistency in the registration and disclosure of DPs, other pecuniary and non-pecuniary interests; Option 3A extends this consistency further into the core values in other areas of conduct, yet leaves it to authorities to choose how to express these, and/or to add further values where they consider it necessary to do so.
- 6.7 Where the preferred option is Option 3B, then in theory one way in which this could be implemented is by one authority's existing Code being adopted by all the other authorities. However, it may be more conducive to securing agreement if any pan-Hampshire Code that emerges were to be seen as a "new" Code, not originating from any one authority, but an evolution building on the work and experience to date of the Members of all the HIOWLA authorities.

## 7. Proposal

- 7.1 Following consideration of the options, HFRA's Standards and Governance Committee expressed a preference for Option 2. This is felt to strike a reasonable balance between achieving consistency in the disclosure of interests, while retaining flexibility for some local variation in the setting of standards for

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<sup>2</sup> S.27(2) Localism Act 2011

<sup>3</sup> S.28(1) Localism Act 2011

<sup>4</sup> S.28(2) Localism Act 2011

<sup>5</sup> S.28(5) Localism Act 2011

<sup>6</sup> S.31(10) Localism Act 2011

other aspects of conduct and behaviour. Further, this would not preclude the adoption of consistent standards for such other aspects of conduct and behaviour at some future stage, should this be desired.

7.2 In the event that Option 2 were to receive the support of Hiowla, a suitable draft document has been prepared for agreement (see Appendix), and recommendation to all constituent local authorities for adoption.

7.3 As indicated above (para 6.3) Hiowla cannot resolve to adopt a Code of Conduct on behalf of any constituent authority, or to unilaterally amend any authority's existing Code or Standing Orders. However, Hiowla can agree to ask each constituent local authority to review and, where necessary, consider revising its existing Code and Standing Orders with a view to ensuring that these include the core provision set out in the Appendix to the report. Constituent authorities would be invited to do this having regard to the value that is added by the arrangements of all Hiowla authorities, governing the disclosure of member interests, sharing the same essential characteristics.

## **8. Conclusion**

8.1 This report has set out the main options for the development of a pan-Hampshire Code of Conduct for Members, together with an assessment of the advantages and disadvantages of each, and identifies one particular option for consideration as a way forward. A pan-Hampshire Code offers the opportunity for greater consistency in approach amongst the HLOWLA authorities towards their responsibilities regarding Member conduct under the Localism Act .

## **9. Recommendation**

9.1 That the options for a pan-Hampshire Code of Conduct are considered, and a steer given as to the preferred way to proceed, and

9.2 In the event that Option 2 is preferred, that all constituent authorities are asked to review and, where necessary, consider revising their existing Code of Conduct and Standing Orders with a view to ensuring that these include the core provisions set out in the Appendix to the report.

**Appendix:**

**Core Provision to be made in the Codes of Conduct and Standing Orders of Hampshire and Isle of Wight Local Authorities (HIOWLA) to achieve consistency of approach to Member Conduct**

**Summary**

HIOWLA considers that it is in the interests of Members of its constituent authorities, and the public served by those authorities, to adopt a consistent approach to the registration and disclosure of Members' pecuniary and non-pecuniary interests that are relevant to the business of the authorities. It is considered such an approach will reduce confusion as to when relevant interests should be disclosed, and minimise the risk of inadvertent failure to comply with relevant requirements.

It has therefore been agreed to invite each constituent authority to review its Code of Conduct for Members and Standing Orders and, where necessary, to consider revising these to ensure that, in addition to the mandatory requirements of the Localism Act, they include the core provisions set out below.

Authorities may of course adopt such further provision in their Code of Conduct or Standing Orders as they consider appropriate, but are requested to ensure that no such provision is inconsistent with the core provisions set out below.

The term "Member" includes member and co-opted member, throughout.

**Code of Conduct**

**1. Personal Interests**

- 1.1. A Member has a "personal interest" in an item of business where it relates to or is likely to affect any of the following bodies of which they are a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 1.2. A Member also has a "personal interest" in an item of business where a decision in relation to it might reasonably be regarded as affecting the well being or financial position of the Member, a member of the Member's family or person with whom they have a close association, more than other council tax payers, ratepayers or inhabitants of the authority's area.
- 1.3. A Member shall disclose a "personal interest" at a meeting of the authority, committee or sub-committee, where the Member considers that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the

interest becomes apparent, and shall be recorded in the minutes of the meeting.

- 1.4. Disclosure of a personal interest does not affect the ability of the Member to participate in discussion or vote on the relevant item, provided it is not also a disclosable pecuniary interest.

## 2. Gifts and Hospitality

- 2.1. A Member shall enter in the authority's register of interests the receipt of any gift or hospitality, where the Member estimates the value to be at least £50, within 28 days of receipt.

## **Standing Orders**

### 3. Exclusion from Meeting Where Member Holds a Disclosable Pecuniary Interest

- 3.1. The authority's Standing Orders shall provide for the exclusion of a Member of the authority from a meeting while any discussion or vote takes place on a matter in which the Member has a disclosable pecuniary interest, unless a dispensation has been granted.