

Date: 26th November 2012

Dear Sir or Madam,

You are hereby summoned to attend a Standards Committee meeting of the Bolsover District Council to be held in Committee Room 1, Sherwood Lodge, Bolsover, on **Tuesday 4th December 2012 at 1400 hours**.

Members are reminded that under Section 51 of the Local Government Act 2000 the Bolsover Code of Conduct was adopted by the Council on 16th May 2007. It is a Councillor's duty to familiarise him or herself with the rules of personal conduct by which Councillors must conduct themselves in public life. In addition, Members should review their personal circumstances on a regular basis with these rules in mind and bearing in mind the matters listed on the Agenda for discussion at this meeting.

Copies of the Bolsover Code of Conduct for Members will be available for inspection by any Member at the meeting.

Register of Members' Interest - Members are reminded that a Member must within 28 days of becoming aware of any changes to their interests under paragraph 14 or 15 of the Code of Conduct provide written notification to the Authority's Monitoring Officer.

Members are reminded of the provisions of Section 106 of the Local Government Finance Act 1992 and the responsibility of Members to make a declaration at this meeting if affected by the Section and not to vote on any matter before this meeting which would have an affect on the Council's budget.

You will find the contents of the agenda itemised on pages 2 and 3.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'C. G.', written in a cursive style.

Chief Executive Officer

To: Chair and Members of the Standards Committee

STANDARDS COMMITTEE

AGENDA

Tuesday 4th December 2012 at 1400 hours
Committee Room One

Item No.		Page No.(s)
	PART 1 – OPEN ITEMS	
1.	<u>Apologies for absence</u>	
2.	<u>Urgent Items of Business</u>	
	To note any urgent items of business which the Chairman has consented to being considered under the provisions of Section 100(B) 4 (b) of the Local Government Act 1972.	
3.	<u>Declarations of Interest</u>	
	Members should declare the existence and nature of any Disclosable Pecuniary Interest and Non Statutory Interest as defined by the Members' Code of Conduct in respect of:	
	a) any business on the agenda	
	b) any urgent additional items to be considered	
	c) any matters arising out of those items	
	and if appropriate, withdraw from the meeting at the relevant time.	
4.	<u>Minutes</u>	
	To approve the Minutes of a meeting of the Standards Committee held on 10 th October 2012.	4 to 10
5.	Recommended Item from Executive 22 nd October 2012 Minute No. 539 Community Right To Challenge.	11 to 21
6.	Complaints of Breach of the Code of Conduct – 2012	22 and 23
7.	Update on District and Parish Councillors Registration of Declaration of Pecuniary Interest and Other Interests.	24 to 26
8.	Flow Chart for Disclosure of Interests.	To Follow
9.	NALC Guidance on Parish Councils and the setting of the precept and Disclosable Pecuniary Interests.	27 to 44

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| 10. | Counsel's opinion sought by Hampshire County Council relating to Disclosable Pecuniary Interest | 45 to 56 |
| 11. | Constitution Working Party Update | Verbal Report |

STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee of the Bolsover District Council held in Committee Room 1, Sherwood Lodge, Bolsover, on Wednesday 10th October 2012 at 1400 hours.

PRESENT:-

J. Yates in the Chair

Cooptees: J Yates and R Jaffray

Members:-

Councillors M.G. Crane, A.M. Syrett, M.J. Dooley, H.J. Gilmour, D.S. Watson (entered during Minute No. 485) and G.O. Webster.

Officers:-

S.E.A Sternberg (Solicitor and Monitoring Officer), A. Turner (Deputy Monitoring Officer), L. Johnson (Payroll Manager) (for Minute No. 495 only) and A. Bluff (Democratic Services Officer).

482. APOLOGIES

There were no apologies for absence submitted.

483. URGENT ITEMS OF BUSINESS

There were no urgent items of business to consider.

484. DECLARATIONS OF INTEREST

There were no declarations of interest made.

485. MINUTES – 15TH AUGUST 2012

Councillor Syrett referred to the last meeting and the discussion where members are required to declare an interest because of a body to which they were nominated to by the Council. She stated that the recommendation in the minutes was not what was considered at the last meeting.

STANDARDS COMMITTEE

The Monitoring Officer replied that the recommendation in the minutes was the same recommendation considered and Resolved by Members at Council on 25th July 2012 and had been presented to Standards Committee for approval to be included in the Council's Constitution.

Councillor Watson entered the meeting at this point.

Councillor Syrett replied that at the last Standards Committee meeting the Code of Conduct had been expanded on from the discussion held at Council in July and Members had considered two solutions to the problem but the recommendation in the minutes only stated one solution.

Councillor Syrett's proposed an amendment to the minutes as follows;

It was proposed by Members that this matter should be looked at with a view to the Code of Conduct being altered so that Members who represented various outside bodies could speak and vote on matters relating to those outside bodies.

Moved by Councillor A.M. Syrett, seconded by Councillor M.G. Crane

RECOMMENDED that Council be asked to consider this matter with a view to the Code of Conduct being altered so that Members who represent various outside bodies could speak and vote on matters relating to those outside bodies.

Moved by Councillor G. O. Webster, seconded by Councillor H.J. Gilmour

RESOLVED that subject to the above amendments, the minutes of a Standards Committee meeting held on 15th August 2012, be approved as a correct record.

(Head of Democratic Services)

486. **RECOMMENDED ITEM FROM LICENSING COMMITTEE HELD ON 1ST AUGUST 2012 – MINUTE NUMBER 281; AUTHORISATION OF OFFICERS**

The Deputy Monitoring Officer presented a recommended item from Licensing Committee held on 1st August 2012 regarding amendments to the Authorisation of Officers to be included in the Council's Constitution.

The changes to the authorisations were to include additional officers under the Local Government (Miscellaneous Provisions) Act 1976 due to the recent decision to test Private Hire and Hackney Carriage vehicles at the Riverside Depot. Administration staff had been included in order for them to be able to call in vehicles for testing when necessary.

Moved by Councillor M.J. Dooley, seconded by Councillor H.J. Gilmour

RECOMMENDED that amendments to the Authorisation of Officers as detailed in Schedule 1 be approved for inclusion in the Council's Constitution.

STANDARDS COMMITTEE

(Head of Democratic Services)

487. RECOMMENDED ITEM FROM SCRUTINY MANAGEMENT BOARD HELD ON 20TH AUGUST 2012 – MINUTE NUMBER 342; AMENDED TERMS OF REFERENCE FOR THE SCRUTINY MANAGEMENT BOARD

The Deputy Monitoring Officer presented a recommended item from Scrutiny Management Board held on 20th August 2012 regarding amendments to the Terms of Reference for Scrutiny Management Board to be included in the Council's Constitution.

Moved by Councillor H.J. Gilmour, seconded by Councillor M.J. Dooley
RECOMMENDED that the amendments to the Terms of Reference for the Scrutiny Management Board as presented in the report be approved for inclusion in the Council's Constitution.

(Head of Democratic Services)

488. RECOMMENDED ITEM FROM SCRUTINY MANAGEMENT BOARD HELD ON 20TH AUGUST 2012 – MINUTE NUMBER 343; AMENDED SCRUTINY PROCEDURE RULES

The Deputy Monitoring Officer presented a recommended item from Scrutiny Management Board held on 20th August 2012 regarding amendments to the Scrutiny Procedure Rules to be included in the Council's Constitution.

Moved by Councillor H.J. Gilmour, seconded by Councillor M.J. Dooley
RECOMMENDED that the amendments to the Scrutiny Procedure Rules as presented in the report be approved for inclusion in the Council's Constitution.

(Head of Democratic Services)

489. UPDATE ON PARISH AND TOWN COUNCILLORS REGISTRATION OF DISCLOSABLE PECUNIARY INTERESTS

The Deputy Monitoring Officer circulated information to the meeting in relation to Parish and Town Council Register of Interest Forms.

The report detailed which Parish/Town Councils had returned their forms to the Monitoring Officer and which ones were still outstanding.

Members noted the update and that relatively few were outstanding.

STANDARDS COMMITTEE

490. OFFICE OF THE SURVEILLANCE COMMISSIONERS INSPECTION REPORT INTO THE COUNCIL'S USE OF RIPA

The Council was subject to three yearly inspections from the Office of the Surveillance Commissioner (OSC) into the Council's use of RIPA.

The Monitoring Officer presented a report in relation to an inspection carried out by the OSC on 10th July 2012.

The Regulation of Investigatory Powers Act 2000 (RIPA) enabled the Council to undertake covert surveillance for the purpose of detecting or preventing crime and preventing disorder. RIPA powers included directed surveillance, use of covert human intelligence sources and use of communications data.

In the three years under inspection, the Council had used RIPA on three occasions, most frequently in connection with suspected benefit fraud cases. There had been no applications for the use of the Covert Human Intelligence Sources.

A copy of the OSC report was attached as an appendix to the report for Members' consideration. The OSC report highlighted some issues and made a number of recommendations and officers had confirmed that the Council would implement the recommendations.

A report would be presented to the next meeting of Standards Committee recommending changes to the RIPA Policy and Procedure in line with the recommendations in the OSC report. An update would also be given on training.

Committee were reminded that from 1st November 2012 the Council would require RIPA authorisations to be signed off by a Magistrate and made subject to a seriousness threshold and that this had been previously delegated to the Monitoring Officer to introduce.

Moved by Councillor M.J. Dooley, seconded by Councillor H.J. Gilmour
RESOLVED that the report be received.

(Solicitor and Monitoring Officer / Head of Democratic Services)

491. MEMBER COMPLAINTS LOG

The Monitoring Officer presented a report in relation to complaints made against Members. The report was presented in the revised format as agreed at the last meeting.

The Monitoring Officer sought Members views on including complaints out of jurisdiction on the complaints log; this would increase the number of complaints on the form but would look clearer.

A short discussion took place.

STANDARDS COMMITTEE

Members agreed that complaints out of jurisdiction be recorded separately.

(Monitoring Officer)

492. UPDATE ON DISTRICT COUNCILLORS REGISTRATION OF DISCLOSABLE PECUNIARY INTERESTS

The Deputy Monitoring Officer reported that there was one outstanding Registration of Disclosable Pecuniary Interest form to be returned by a Member.

Members noted the update.

493. UPDATE ON PARISH AND TOWN COUNCILS POSITION IN RELATION TO THE NEW ETHICAL FRAMEWORK

The Deputy Monitoring Officer gave a verbal update to the meeting regarding Parish and Town Councils' position in relation to the new Ethical Framework.

It was noted that Parish and Town Clerks would be trained during October 2012 on the new Ethical Framework.

It was reported that the Monitoring and Deputy Monitoring Officers had met with the Derbyshire Police to see how they would deal with any criminal implications. It was noted that the Police would also be attending the training.

Members noted the update.

494. DISTRICT COUNCILLORS' TRAINING ON THE NEW ETHICAL FRAMEWORK

The Deputy Monitoring Officer advised the meeting that training for District Councillors on the new Ethical Framework would start early in 2013 and conclude by April 2013.

Members noted the update.

The Payroll Manager entered the meeting at this point.

495. CHANGES TO PART 6 OF THE CONSTITUTION – MEMBERS ALLOWANCES

The Monitoring Officer presented a report in relation to changes to Part 6 of the Council's Constitution with regard to Member Allowances.

STANDARDS COMMITTEE

The content had been streamlined to make it more 'user' friendly; no substantive changes had been made as these would have to be subject to recommendations of an Independent Remuneration Panel and report to Council.

Members asked questions.

A discussion took place.

In response to a question raised by Councillor Crane in relation to payment of subsistence allowance to Members, the Payroll Manager informed the meeting that the two previous claim forms would now be condensed into one. It was noted that this form would still require authorisation from the Leader of the Council.

A short discussion took place.

Moved by Councillor G.O. Webster, seconded by Councillor H.J. Gilmour
RECOMMENDED that the Council be recommended to approve the streamlining to Part 6 of the Members Allowances section in the Councils Constitution.

(Monitoring Officer / Head of Democratic Services)

The Payroll Manager left the meeting.

496. CONSTITUTION REVIEW AND MEMBERSHIP OF THE CONSTITUTION WORKING PARTY – UPDATE

Further to Members' concerns regarding issues in relation to the Ethical Framework as raised at Minute 485 above, the Monitoring Officer advised the meeting that this would need to be addressed.

The Monitoring Officer advised the meeting that the Council Procedure Rules at Part 4.1 of the Constitution would be addressed as the first item by the Working Party.

A discussion took place.

It was agreed that the membership of the Constitution Working Party be Councillors Gilmour, Syrett and Webster.

Moved by Councillor M.G. Crane, seconded by Councillor D. Watson
RESOLVED that the Membership of the Constitution Working Party be Councillors Gilmour, Syrett and Webster.

(Monitoring Officer / Head of Democratic Services)

STANDARDS COMMITTEE

497. ANNUAL REVIEW REPORT ON THE EMPLOYEE GIFTS AND HOSPITALITY REGISTER

The Monitoring Officer presented a report in relation to the Employee Gifts and Hospitality Register.

The Gifts and Hospitality Registers were checked annually by the Monitoring Officer and Legal Support Officer to ensure correct use of Registers and that the correct guidance was in place.

2012 would be the last year that Environmental Health Services Gifts and Hospitality Register would be examined by Bolsover as they were now a North East Derbyshire District Council (NEDDC) department and it would be NEDDC who would carry out their reviews in future.

Members had not in recent years had a Gifts and Hospitality Register but had included relevant declarations on their Register of Interests forms. With the changes to the Standards Regime on 1st July 2012, this had now gone and it had been necessary to establish a Register for Members, which was kept by the CEO's PA.

Members had been informed of the change at Council in July 2012 but the Committee was requested to consider whether any further briefing should be sent generally to Members.

The results of the review were contained on a spreadsheet attached to the report. Where appropriate the report included comment as to the future changes. It was noted that there had been no great use of the Registers.

A discussion took place and Members agreed that a further reminder be sent to all Members.

Moved by Councillor H.J. Gilmour, seconded by Councillor M.G. Crane
RESOLVED that (1) the review on the Employee Gifts and Hospitality Register be accepted,

(2) a further reminder be sent to all Members.

(Monitoring Officer)

The Standards Committee meeting concluded at 1445 hours and Members of the Constitution Working Group then met to arrange a date and time for the first meeting of the Constitution Working Group.

It was agreed that the first meeting of the Constitution Working Group would be held on Thursday 1st November 2012 at 1.30pm in the Executive Meeting Room.

AGENDA ITEM 5
STANDARDS COMMITTEE – 4TH DECEMBER 2012
RECOMMENDED ITEM FROM EXECUTIVE – 22ND OCTOBER 2012

539. COMMUNITY RIGHT TO CHALLENGE

The Solicitor to the Council presented the report to advise Members of the provisions contained within the Localism Act 2011, known as the Community Right to Challenge, which enabled relevant bodies to submit an expression of interest for the running of Council services. This included most Council provided services.

The relevant bodies permitted to submit an expression of interest were defined in the Act as:

- A parish council;
- A voluntary body;
- A community body;
- A body or trust established for charitable purposes;
- Two or more employees of the authority, whether or not they have formed themselves into a body for this purpose, or
- Such other persons or bodies as may be specified by the Secretary of State by regulations.

Members were advised that services provided in partnership with the NHS, those services providing health or social care for complex needs, or statutory powers such as Council Tax setting, were excluded from the Community Right to Challenge.

The Solicitor to the Council advised that there was no requirement for a relevant body to have a local connection and an expression of interest could be submitted in partnership with another organisation, including a commercial organisation or sub-contractor arrangement.

The information and qualifications required for submitting an expression of interest were outlined in the report along with the process that the Council would follow to validate and accept it and carry out a formal tender process. Expressions of Interest would be required to demonstrate best value and promote or improve the social, economic or environmental well-being of the area. Services that were currently provided jointly with other authorities could also be subject to Community Right to Challenge.

Members raised questions in respect of the process and implications of a Community Right to Challenge to which the Solicitor to the Council responded. Concerns were raised in respect of the potential increased costs brought about

by additional procurement exercises and that commercial organisations would be permitted to tender for services through affiliation with permitted relevant bodies.

Moved by Councillor D. McGregor, seconded by Councillor D. Kelly

RESOLVED that (1) the Executive designate 1–21 August of each year as the time period during which the Council will receive expressions of interest for Council services other than those provided jointly with other authorities.

(2) the Executive appoint the Monitoring Officer as proper officer for the purposes of the Community Right to Challenge and recommend to Standards Committee the inclusion of this in the Delegation Scheme in the Constitution.

(3) the Executive authorise the Monitoring Officer to acknowledge expressions of interest for Council services other than those provided jointly with other authorities by 31 August of the year in which the expression of interest is made and advise the relevant body that has made the submission that a decision on whether to accept or reject their expression of interest will be made between 1 September and 31 October of the same year.

(4) once the Monitoring Officer, as proper officer, has undertaken a review of an expression of interest, a report be brought to the Executive at the earliest opportunity for members to decide whether or not to accept or reject the expression of interest. Where the decision is to reject the expression of interest this will include at least one of the statutory grounds for refusal set out in paragraph 3.13 of the original Executive report. Where the decision is to approve the expression of interest the procurement exercise will commence between 1 and 30 November of the year in which the expression of interest is made.

(5) for the purposes of the legislation, the minimum period to elapse between the date of the Council's decision to accept an expression of interest and the date on which the procurement exercise will start be two days and the maximum period be 91 days. The maximum period to elapse between the date on which the Council receives an expression of interest submitted by a relevant body and the date on which it notifies the relevant body of its decision in respect of the expression of interest be 92 days.

(6) a report setting out timescales for those Council services currently provided jointly with other authorities be brought back to a future meeting of Executive.

(7) current contracts with third parties be advertised on the Council's website for the purposes of the Community Right to Challenge 6 months before the end of the contract.

(8) the Monitoring Officer be given delegated authority to vary the timescales in paragraphs 1 to 5 above, following consultation with the Leader of the Council.

(9) the timescales given in paragraphs 1 to 4 be publicised on the Council's website and be subject to review in 12 months' time.

REASON FOR DECISION: This is new legislation which needs to be implemented and a process put in place.

(Solicitor to the Council/Head of Democratic Services)

RECOMMENDATION

That Standards Committee approve that the Monitoring Officer be given delegated authority to vary the timescales in paragraphs 1 to 5 above, following consultation with the Leader of the Council.

Committee:	Executive	Agenda Item No.:	6.
Date:	22 nd October 2012	Status	Open
Category	Decision within the functions of Executive		
Subject:	Community Right to Challenge		
Report by:	Solicitor to the Council and Monitoring Officer		
Other Officers Involved	Deputy Monitoring Officer		
Director	Chief Executive Officer		
Relevant Portfolio Holder	N/A		

RELEVANT CORPORATE AIMS

COMMUNITY SAFETY – Ensuring that communities are safe and secure
CUSTOMER FOCUSED SERVICES – Providing excellent customer focused services
ENVIRONMENT – Promoting and enhancing a clear and sustainable environment
REGENERATION – Developing healthy, prosperous and sustainable communities
SOCIAL INCLUSION – Promoting fairness, equality and lifelong learning.
STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

This community right relates to all services provided by the Council and therefore relates to all the Council's aims.

TARGETS

The subject matter does not directly relate to any targets specified in any approved plans.

VALUE FOR MONEY

There are no direct value for money issues from the report, however should a service be subject to a successful community right to challenge this would be an issue at the procurement stage.

THE REPORT

This report sets out provisions contained within the Localism Act, known as the Community Right to Challenge, to enable relevant bodies to take over the running of Council services. The report contains details of relevant bodies that can submit an expression of interest to run a service, those services

exempt from the Right, grounds on which expressions of interest may be declined and the process for dealing with expressions of interest and subsequent procurement exercises.

The Council's Strategic Alliance Management Team has already suggested the Monitoring Officer as the proper officer for the Community Right to Challenge.

The Community Right to Challenge is different from the Community Right to Bid which allows people to bid to take over assets that are of value to their local community such as a village shop, pub, community centre or library (also known as Assets of Community Value) and the Community Right to Build which is linked to neighbourhood planning.

ISSUES/OPTIONS FOR CONSIDERATION

The Localism Act 2011 introduced a right for "relevant bodies" to submit an expression of interest to take over the provision of a service on behalf of the Authority. Where a valid expression of interest is received, the Authority is required to undertake a procurement exercise for that service, which may lead to the Authority awarding a contract for the provision of that service.

"Relevant bodies" are defined in the Act as –

- A parish council;
- A voluntary body;
- A community body;
- A body or trust established for charitable purposes;
- Two or more employees of the authority, whether or not they have formed themselves into a body for this purpose, or
- Such other persons or bodies as may be specified by the Secretary of State by regulations.

There is no requirement for a voluntary or community body to have any local connection and any of the above bodies can submit an expression of interest in partnership with any other organisation, including a commercial organisation, or propose to sub-contract the work to a commercial organisation. Providing that this is done, there is no requirement for the relevant body to undertake the majority of, or any particular share of, the work.

The expression of interest must relate to the provision of, or assisting in the provision of, a "relevant service" which means any service which is currently provided by or on behalf of the Authority. Services provided in partnership with North East Derbyshire District Council as part of the Strategic Alliance

would also count as relevant services. However, the following services are “excluded services” which cannot be the subject of an expression of interest –

- Services provided in partnership with NHS bodies, or by an NHS body on behalf of the Authority;
- A service provided to a named person with complex individual health or social care needs; or
- A service which includes the exercise of a statutory power which cannot be delegated. So, the setting of Council Tax or the determination of a planning application is not legally capable of being undertaken by anyone other than the local authority and so cannot be the subject of an expression of interest.

An expression of interest can relate to services such as management and maintenance of playing fields or parks, refuse collection and re-cycling, running a branch library or a leisure centre or operation of off-street car parks. Equally, a team of Council staff might consider taking on a back office activity.

The Act provides that an authority may define services and set periods during which expressions of interest may be submitted for those services, and may then refuse to consider an expression of interest which is submitted at the wrong time.

The expression of interest must be in writing and meet certain requirements. These include the provision of –

- a) Information about the financial resources of the relevant body which is submitting the expression of interest;
- b) Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing or assisting in providing the relevant service;
- c) Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates;
- d) Information about the outcomes to be achieved by the relevant body or, where appropriate, the consortium of which it is a part, in providing or assisting in the provision of the relevant service, in particular –
 - how the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant authority’s area; and
 - how it will meet the needs of the users of the relevant service.

- e) Where the relevant body consists of employees, details of how that relevant body proposes to engage other employees of the relevant authority who are affected by the expression of interest.

The first stage comprises the validation and acceptance or rejection of the expression of interest.

When an expression of interest is received, the Authority needs to check that it is submitted by a “relevant body” for a “relevant service” which is not an “excluded service”. If it fails to meet these requirements, the Authority notifies the person who submitted the expression of interest that it is not a valid expression of interest, but need take no further action.

Once an expression of interest has been validated, the Council will acknowledge it within a set time period and advise the relevant body of the timescales in which a decision on whether to accept or reject it will be made. The Authority must set and publish the maximum period which will elapse between receipt of an expression of interest and the Authority notifying the body which submitted the expression of interest of its acceptance or rejection of that expression of interest, but the Council may set different maximum periods for different cases.

It will then be necessary for the proper officer to conduct a review of the expression of interest to determine whether it should be accepted. This will involve collecting information from the relevant Assistant Director currently responsible for the running of the service. Where an expression of interest falls within one of the grounds for rejection, the Council may still decide to accept it.

Following the outcome of this review it is proposed that the proper officer take a report to Executive at the earliest opportunity for members to decide whether or not to accept or reject the expression of interest. Decisions to reject an expression of interest must be supported by at least one of the statutory grounds for rejection set out below. The Council must then notify the persons or body who submitted the expression of interest of its decision and of the reasons for that decision.

There are 10 grounds on which an authority may reject an expression of interest –

- The expression of interest does not meet the statutory requirements, because it is not from a relevant body or is not for a relevant service;
- The supporting information is inadequate or incorrect;
- Any member of the body making the bid, or of their consortium, is not suitable to provide the service. This would cover absence of a necessary qualification or past conduct;

- The authority has already taken a formal decision to cease to provide the service. So an expression of interest cannot be used as a means to challenge an authority's decision to close a facility or cease a service;
- Taking this service in isolation would result in a loss of integration with NHS services to the detriment of users of the integrated service.
- The service is already the subject of a procurement exercise.
- The authority is already in negotiations in writing with a third party for the provision of the service;
- The authority has already published its intention to consider the provision of the service by a body to be set up by two or more employees;
- The expression of interest is vexatious or trivial; and
- The acceptance of the expression of interest is likely to lead to a breach of law or statutory duty. This would cover an expression of interest which would require delegation of statutory powers which cannot be delegated or where it would lead to a breach of the authority's duty to secure best value, for example by causing greater cost by the break-up of shared service arrangements.

The Act also requires the Authority, in considering an expression of interest, to consider whether the acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the area, but this does not form a ground for rejecting an expression of interest.

If the Authority acts unreasonably in rejecting an expression of interest, that decision would be open to judicial review.

Where a valid expression of interest is accepted, the Authority moves into procurement mode and must conduct an appropriate procurement exercise. The scale of the procurement exercise will be dictated by the nature and value of the service concerned. So, for a Part A service which exceeds the procurement thresholds (currently £173,934), the Public Contracts Regulations will require a formal Official Journal of the European Union procurement. For Part B services, the Regulations still apply but prescribe lower levels of formality.

The range of the service (in terms of the service and the geographical area) to be subject to a procurement exercise will be set by the expression of interest. The Authority may only vary the range of services with the agreement of the body or persons who submitted the expression of interest. However, the specification to which the service is to be provided, the contract terms and

conditions, and the criteria for evaluation of tenders are for the Authority to determine.

Although an expression of interest may be submitted by a genuine community or voluntary organisation and the Authority may wish to encourage such community involvement in service provision, once the Authority goes out to open tender, it cannot prevent tenders being submitted by private commercial organisations and will be required to evaluate all tenders received on the same evaluation criteria.

The Authority must set a minimum and a maximum time from the acceptance of an expression of interest to the start of the procurement exercise. This allows time for the preparation of a specification for the service and for the invitation to bidders.

The final phase of the process is essentially a procurement exercise, so it requires the Shared Procurement Unit to run the process with the appropriate Assistant Director taking a leading role in settling the service specification and in the evaluation of tenders, with appropriate legal, financial, HR and other support.

The proper officer would be responsible for managing each procurement exercise, subject to the settlement of the specification for the service and the evaluation of tenders with the appropriate Assistant Director.

In relation to existing contracts with third parties, notification will appear on the Council's website 6 months before the end of the contract on the contracts register on the website. This should be designated as the official period for these contracts.

Other Supporting Information

Guidance on the Community Right to Challenge is available to download at:
<http://www.communities.gov.uk/publications/communities/righttochallenge/gestatguide>

The Government have also set up a dedicated website for community rights including the Community Right to Challenge. This can be found here:
<http://communityrights.communities.gov.uk/what-are-community-rights/community-right-to-challenge/>

IMPLICATIONS

Financial: None, although any procurement exercise which result may provide financial consequences.

Legal: As in the report

Human Resources: As in the report

RECOMMENDATIONS

1. That the Executive designate 1–21 August of each year as the time period during which the Council will receive expressions of interest for Council services other than those provided jointly with other authorities.
2. That the Executive appoint the Monitoring Officer as proper officer for the purposes of the Community Right to Challenge and recommend to Standards Committee the inclusion of this in the Delegation Scheme in the Constitution.
3. That the Executive authorise the Monitoring Officer to acknowledge expressions of interest for Council services other than those provided jointly with other authorities by 31 August of the year in which the expression of interest is made and advise the relevant body that a decision on whether to accept or reject their expression of interest will be made between 1 September and 31 October of the same year.
4. That, once the Monitoring Officer, as proper officer, has undertaken a review of an expression of interest, a report be brought to the Executive at the earliest opportunity for members to decide whether or not to accept or reject the expression of interest. Where the decision is to reject the expression of interest this will include at least one of the statutory grounds for refusal set out in paragraph 3.13 of the original the Executive report. Where the decision is to approve the expression of interest the procurement exercise will commence between 1 and 30 November of the year in which the expression of interest is made.
5. That, for the purposes of the legislation, the minimum period to elapse between the date of the Council's decision to accept an expression of interest and the date on which the procurement exercise will start be two days and the maximum period be 91 days. The maximum period to elapse between the date on which the Council receives an expression of interest submitted by a relevant body and the date on which it notifies the relevant body of its decision in respect of the expression of interest be 92 days.
6. That a report setting out timescales for those Council services currently provided jointly with other authorities be brought back to a future meeting of Executive.
7. That current contracts with third parties be advertised for the purposes of the Community Right to Challenge 6 months before the end of the contract on the Council's website.
8. That the Monitoring Officer be delegated authority to vary the timescales in paragraphs 1 to 5 above, following consultation with the Leader of the Council.

9. That the timescales given in paragraphs 1 to 4 be publicised on the Council's website and be subject to review in 12 months' time.

REASON FOR DECISION TO BE GIVEN IN ACCORDANCE WITH THE CONSTITUTION

This is new legislation which needs to be implemented and a process put in place.

ATTACHMENTS: **N**
FILE REFERENCE: **None**
SOURCE DOCUMENT: The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012

Complaints of Breach of the Code of Conduct – 2012

Year	Number Received	PC	DC	Monitoring Officer's decision in consultation with the Independent Persons – action other than investigation.	Investigation	Hearing	Outstanding.
MC 1/2012	1	1					
MC 2/2012 (formally LAC 4/2012)	2	1		N/A			
MC 3/2012 (formally LAC 7/2011)	3	1		N/A	Yes		
MC 4/2012	4	1					
MC 5/2012	5	1					
MC 6/2012	6	1					
MC 7/2012	7	1					
MC 8/2012	8	1					
MC 9/2012	9	1					
MC 10/2012	10		1				

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MC 11/20012	11	1					
MC 12/2012	12	1					

Number (in addition to the above) rejected as being out of jurisdiction 2

Year	Number of Complaints	Average time to decision

AGENDA ITEM 7 – STANDARDS COMMITTEE 4TH DECEMBER 2012

Update on Parish/Town Council Register of Interests Forms

Council	No of Councillors	Forms Outstanding	Code Adopted	Progress
Ault Hucknall	10	0	BDC recent code including Other Interests.	
Barlborough	8	1	BDC recent code including Other Interests.	26.9.12 Spoke to Clerk. 1 Reminder sent to Cllrs but will now chase again for the outstanding forms.
Blackwell	10	0	BDC recent code including Other Interests.	
Clowne	12	0	BDC recent code including Other Interests.	
Elmton-with-Creswell	11	0	BDC recent code including Other Interests.	
Glapwell	10	0	BDC	
Hodthorpe & Belph	7	0	BDC recent code including Other Interests.	
Old Bolsover Town Council	12	0	BDC	
Pinxton	12	0	BDC	
Pleasley	9	0	BDC	

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Scarcliffe	13	0	NALC	29.10.12 Clerk advised me that she would email a copy of the NALC code that has been adopted.
Shirebrook Town Council	16	3	BDC recent Code including Other Interests	2/11/12 Clarification from the Clerk that hopefully all the forms will be sent to me for the end of w/c 5/11/12 26.9.12 No Clerk in post at moment. Receptionist currently on S/L. Left message chasing both the forms and confirmation of code as soon as someone returns to office. New Clerk starts Monday 1 st October.
South Normanton	14	0	BDC recent code including Other Interests.	
Tibshelf	10	0	BDC recent code including Other Interests.	
Whitwell	8	0	BDC	

Update on Parish/Town Council Register of Interests Forms – Other Interests.

Council	No of Councillors	Forms Outstanding	Progress
Ault Hucknall	10	10	Other Interest forms issued to Clerk on 1.11.12
Barlborough	8	3	Other Interest forms issued to Clerk on 1.11.12
Blackwell	12	2	Other Interest forms issued to Clerk on 1.11.12
Clowne	12	1	Other Interest forms issued to Clerk on 1.11.12
Elmton-with-Creswell	11	1	Other Interest forms issued to Clerk on 1.11.12
Glapwell	10	10	
Hodthorpe & Belph	7	7	Other Interest forms issued to Clerk on 1.11.12
Old Bolsover Town Council	12	12	
Pinxton	12	12	
Pleasley	9	9	
Scarcliffe	13		Have adopted NALC Code so no Other Interest forms issued.
Shirebrook Town Council	17	17	Confirmed by email that they have adopted BDC Code but not stated which of the two this is.
South Normanton	14	14	Other Interest forms issued to Clerk on 1.11.12
Tibshelf	10	10	Other Interest forms issued to Clerk on 1.11.12
Whitwell	8	8	

Advice given by the Monitoring Officer in relation to NALC guidance

I am aware that NALC have released the attached guidance which advises that, in NALC's opinion, the setting of the precept by the Parish Council is a matter where the Parish Councillors will need to declare a DPI.

I have reviewed the legislation including the relevant sections of the Localism Act 2011, the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. I have also looked at the NALC advice.

My conclusion is that I do not agree with the NALC advice given. I do not think Parish Councillors considering the setting of the precept in the Parish Council Meeting have a DPI. However, in the light of the NALC advice, Parish Councillors may wish to take a "Safety First" approach and sort out dispensations. These can be granted by the Parish Council itself prior to consideration of the item but on the receipt of a written application by the members concerned. The dispensation can be for up to 4 years. The NALC briefing has usefully enclosed a copy of a form which could be used and signed by the Councillors affected and submitted to the Parish Council as an application.

I would ask that you let me know what you decide to do.

Members' conduct and the registration and disclosure of their interests (England)

Introduction

1. The Localism Act 2011 ('the 2011 Act') received Royal Assent in November 2011. It replaced the statutory framework regulating the conduct of members of local authorities in England established by the Local Government Act 2000 ('the 2000 Act'). The 2011 Act abolished the Standards Board for England on 1 April 2012. The provisions in the 2000 Act for the Secretary of State to specify principles which govern the conduct of members of relevant authorities, to issue a model code of conduct and the requirement for district or unitary authorities to establish standards committees (responsible for maintaining high standards of conduct by the members of the parish councils in their area) ceased to apply on 1 July 2012. Also on 1 July 2012, standards committees and the First-tier Tribunal lost their jurisdiction in respect of member conduct.
2. The 2011 Act has introduced new arrangements to regulate the conduct of members of local authorities including parish councils, the registration and disclosure of certain interests and how complaints about their conduct are handled. The 2011 Act has also created new criminal offences in respect of a member's failure to register and disclose certain interests and his/her participation in discussions and voting at meetings on matters where he/she holds such interests. These new arrangements came into force on 1 July 2012.
3. The statutory provisions for the new arrangements are contained in sections 26 - 34 and Schedule 4 to the 2011 Act.
4. The provisions in the 2011 Act apply to both members and "co-opted members" of "relevant authorities". A "co-opted member" is defined in s. 27 (4) of the 2011 Act as a

person who is not a member of the relevant authority but who is either a member of any committee or sub-committee of the authority, or a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, **and** who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee. In the rest of this Note, a reference to a “member” of an authority includes a co-opted member of the authority unless otherwise expressed. “Relevant authorities” which are defined in s. 27(6) of the 2011 Act include district, county, London Boroughs, parish councils, fire and rescue authorities, economic prosperity boards, National Park authorities, and the Broads Authority.

New statutory standards framework

New code of conduct

5. A relevant authority must promote and maintain high standards of conduct by members of the authority (s.27(1) of the 2011 Act). In discharging this duty, a relevant authority must adopt a code of conduct to apply to the conduct of their members when acting in their official capacity (s.27(2)). Pursuant to ss.28(1) and (2) a relevant authority’s code of conduct must:-
 - be consistent with the principles of selflessness, integrity, objectivity; accountability; openness; honesty; and leadership and
 - include provisions which the authority considers appropriate in respect of the registration and disclosure of ‘pecuniary interests’ and ‘interests other than pecuniary interests’.

6. The 2011 Act provides no definition of pecuniary or non-pecuniary interests. It imposes mandatory obligations on members in respect of ‘disclosable pecuniary interests’. These are defined in regulations and further explained in paragraph 22 below.

7. A relevant authority must make arrangements to adopt a new code of conduct to take effect on or after 1 July 2012 (Article 2 of the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitional Provisions) Order 2012 SI 2012/1463 (‘the 2012 Order’).

8. Further to paragraph 5 above, with effect from 1 July 2012 members are subject to new obligations at meetings in relation to holding disclosable pecuniary interests in business that is under consideration. See also paragraphs 22, 24 and 25 below. Members are subject to the statutory obligations about disclosable pecuniary interests irrespective of the code of conduct adopted by their councils or the date that the code was adopted.

9. In accordance with s.28(13) of the 2011 Act, a relevant authority's function of adopting, revising or replacing a code of conduct may be discharged only by the authority, not by a committee or officer. A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area (s.28(12)).

10. Subject to the provisions of ss. 28(1) and (2) of the 2011 Act, a relevant authority is free to decide the form and content of the new code of conduct that it adopts. In April 2012, the Department for Communities and Local Government's (DCLG) provided principal authorities with illustrative text for a new 'lighter touch' code of conduct under the 2011 Act. This can be found on DCLG's website using the following link at <http://www.communities.gov.uk/news/localgovernment/2128928>.

11. S.27 (3) of the 2011 Act provides that a parish council may adopt the same code of conduct adopted by its principal authority. Pursuant to s.29 (9), a principal authority for a parish council is the district council for its area or, if there is no district council, it will be the county or London Borough council. Principal authorities have encouraged the parish councils in their areas to adopt the same code of conduct adopted by them. This is because they are responsible for handling and determining code of conduct complaints which relate to members of parish councils in their area. NALC is aware that the codes of conduct adopted by a few principal authorities apply also to the conduct of members in their private lives. Although s.27 (2) of the 2011 Act does not prohibit this, NALC advises parish councils that have adopted the same or a similar code of conduct to their principal authority to remove provisions that relate to the conduct of members in their private lives.

12. Early in 2012, the Local Government Association (LGA), which represents the interests of principal authorities, worked with NALC and other bodies representing those in local government with the intention of producing a template code of conduct that all local authorities could use. NALC advises parish councils not to use the LGA's template code of conduct or the DCLG's illustrative code. In NALC's view, neither usefully or concisely describe obligations regarding conduct. Neither identify nor define pecuniary and non-pecuniary interests. NALC has produced a template code of conduct, designed specifically to meet parish councils' needs. To access NALC's template code of conduct, please see NALC's Legal Briefing ref L09-12.

Handling of code of conduct complaints.

13. The principal authority is exclusively responsible for receiving, investigating and deciding code of conduct complaints which relate to the members of parish councils in their area. Ss.28(6) and (9) of the 2011 Act require a principal authority to have in place arrangements to investigate and determine allegations that a member of a parish council in its area has failed to comply with his/her council's code of conduct.
14. With the exception of the appointment and role of at least one independent person, (see paragraph 15 below), the 2011 Act does not prescribe the arrangements that principal authorities must have in place for the investigation and determination of code of conduct complaints. A principal authority may delegate the discharge of such functions to a committee or officers pursuant to s. 101(1) of the Local Government Act 1972 ('the 1972 Act'). A committee with responsibility for investigating and determining code of conduct matters would be appointed pursuant to s.102 of the 1972 Act. As with any committee of a principal authority, it will be subject to the rules for proportional representation of different political groups set out in ss.15 – 17 of the Local Government and Housing Act 1989 (unless the whole council votes to suspend the proportionality rules for that committee). As such, a principal authority committee is not required to include in its membership the members of any of the parish councils for which the principal authority is responsible. A principal authority may arrange for its Monitoring Officer to have certain responsibilities relating to the investigation of a code of conduct complaint or deciding whether a complaint that it receives merits being investigated .

15. The 2011 Act does not give a principal authority express powers to undertake investigations or to conduct hearings (any such action may be implied). Similarly it has no express powers to require access to documents and information, or to require members or others to attend interviews/give evidence, or to require the member or others to attend a hearing.

16. A principal authority must appoint at least one independent person (s. 28(7) of the 2011 Act). The views of the independent person must be sought and his/her views taken into account before a principal authority takes a decision on a complaint it has decided to investigate. The views of the independent person may also be sought by the principal authority in other circumstances. The views of the independent person may also be sought by the member of the parish council who is the subject of an allegation for failure to comply with his/her authority's code of conduct.

17. Pursuant to s.28(8) of the 2011 Act, an independent person cannot be a member, co-opted member or an officer of the principal authority or of any parish council within the principal authority's area or a close friend or relative of such person. In addition, a person cannot be an independent person if, during the 5 years before his/her appointment, he/she has been a member, or an officer of the principal authority or of any parish council within the principal authority's area. The independent person may be paid an allowance or expenses connected to their appointment. S.28 (8) (d) provides that a person does not cease to be independent merely because such payments are made.

18. The effect of s. 28(8) of the 2011 Act means that a member of a principal authority's standards committee mandatory under the previous standards regime before 1 July 2012, is ineligible to be appointed by the principal authority as an independent person. However Article 7 of the 2012 Order provides that, in respect of the appointment of an independent person made before 1 July 2013, a principal authority may appoint a person if he/she was not a member of its standards committee on 1 July 2012 but had held such a post within the last 5 years ending on 30 June 2012.

Breach of code

19. If the principal authority decides that a member of a parish council has breached its code of conduct, the principal authority cannot take action directly against the member of the parish council (s.28 (11) of the 2011 Act). The principal authority's powers are limited to censuring him/her subject to making recommendations that the parish council takes a course of action in respect of the member. Although any such recommendation is not binding on the parish council, the principal authority may recommend, for example, that the parish council removes its member from a committee or that it asks its member to attend training, or to apologise.
20. S.28 (4) of the 2011 Act confirms that a council decision is not invalidated because 'something that occurred in the process of making the decision involved a failure to comply with the code.'

Register of Interests

21. With effect on 1 July 2012 and pursuant to s.29 of the 2011 Act, the Monitoring Officer of the principal authority must establish and maintain a register of interests of the members of the parish councils in its area. Such interests include 'disclosable pecuniary interests' (see paragraph 22 below) and any pecuniary interests and non-pecuniary interests included in the code of conduct adopted by a parish council (see paragraph 5 above). NALC's template code of conduct, referred to in paragraph 11 above, includes obligations for a member to register disclosable pecuniary interests and other interests.
22. The Monitoring Officer must ensure that the register of interests of the members of parish councils in the area is available for inspection at all reasonable hours at a place in the principal authority's area. The principal authority must also publish the register of interests of the members of the parish councils on its website (s.29 (6) of the 2011 Act). A parish council with a website must publish the register of interests of its members and the Monitoring Officer must provide the parish council with any data that the parish council needs to comply with its duty to publish the register of interests on its website, if it has one.

Disclosure of interests upon taking office

23. With effect from 1 July 2012 and pursuant to s.30 of the 2011 Act, a member of a parish council must, within 28 days of becoming a member, notify the Monitoring Officer of any "disclosable pecuniary interests". Upon the re-election of a member or, as the case may be, upon the reappointment of a co-opted member, he/she must also within 28 days notify the Monitoring Officer of "disclosable pecuniary interests" not already included in his or her register of interests. S.30(3) confirms that disclosable pecuniary interests relate to certain interests of:

- (i) the member and
- (ii) the member's spouse or civil partner and
- (iii) the person with whom the member lives as if they were a spouse or civil partner.

The nature of disclosable pecuniary interests in respect of (i) – (iii) above are defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 SI 2012/1464. The interests of the persons in (i)- (iii) above relate to their employment, office, trade, profession or vocation for profit or gain, sponsorship, contracts, beneficial interests in land, licences to occupy land, corporate tenancies and securities. A detailed explanation of disclosable pecuniary interests is given in Legal Briefing L10-12. When notification of a disclosable pecuniary interest is received by the Monitoring Officer, it will be entered into the member's register of interests unless it is a sensitive interest (see paragraph 23 below). Failure to register a "disclosable pecuniary interest" in accordance with s.30 of the 2011 Act is a criminal offence (see also paragraph 36 below). Members' statutory obligations in relation to disclosable pecuniary interests are incorporated in NALC's template code of conduct. NALC's template requires members to register disclosable pecuniary interests within 28 days of the council's adoption of the code (which is not a statutory requirement). See also paragraph 35.

24. Pursuant to s. 32(1), of the 2011 Act, a member of a parish council may ask the Monitoring Officer to exclude from his/her register of interests 'sensitive interests' whether or not these are disclosable pecuniary interests, the details of which, if disclosed, might lead to a threat of violence or intimidation to the member or to a person connected with him/her. The Monitoring Officer has responsibility for deciding if

a member's interests are sensitive interests which are excluded from his/her register of interests.

Disclosure of disclosable pecuniary interests and other interests at meetings

25. With effect from 1 July 2012, s. 31(4) of the 2011 Act, provides that if a member of a parish council is aware that he/she has a disclosable pecuniary interest in a matter being considered at a meeting, he/she is barred from participating in any discussion or voting on it unless he/she has obtained a dispensation. Dispensations requests for disclosable pecuniary interests and other interests are explained in paragraphs 28 - 35. Without a dispensation, a member's participation in the discussion or voting on a matter in which he/she has a disclosable pecuniary interest is a criminal offence under s.34 of the 2011 Act (see also paragraph 36 below). No criminal offence is committed by a member who participates in a discussion or votes at a meeting on the question of whether or not to grant him/herself a dispensation which relieves him/her of the restrictions which apply to the matter in which he/she holds a disclosable pecuniary interest (s.33(4)).

26. Pursuant to ss.31(2) and (3) of the 2011 Act, if a member is aware of a disclosable pecuniary interest in a matter under consideration at a meeting but such interest is not already on the authority's register of interests or in the process of entry onto the register having been notified to the Monitoring Officer, the member must disclose the disclosable pecuniary interest to the meeting and register it within 28 days of the meeting at which the relevant business is considered. Failure to disclose or register the disclosable pecuniary interest is a criminal offence under s.34 of the 2011 Act (see paragraph 36 below). A member with a sensitive interest that has not already been notified to the monitoring officer must simply confirm at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest (s.32(3)).

27. S.31(10) of the 2011 Act provides that a relevant authority's standing orders may require a member with a disclosable pecuniary interest in a matter being considered at a meeting to withdraw from the meeting room while any discussion or vote on it takes place. A parish council is free to adopt such standing orders. A member with a disclosable pecuniary interest who fails to withdraw from a meeting as required by

his/her council's standing orders does not commit a criminal offence. If a council wanted to sanction a member with a disclosable pecuniary interest for not leaving the meeting room as required by its standing orders, it may rely on its other standing orders to vote to exclude the member from the meeting.

28. As explained in paragraph 5 above, the code of conduct adopted by a parish council may include obligations on members to disclose at meetings interests which are not disclosable pecuniary interests. It is not a criminal offence for a member to fail to register or disclose interests which are not disclosable pecuniary interests even if such obligations are imposed by his/her council's code of conduct. A council may make standing orders which apply when members hold interests which are not disclosable pecuniary interests.

Dispensations

29. S.33 of the 2011 Act provides that a parish council may grant a dispensation to a member, not exceeding a period of 4 years, in respect of the restrictions which apply to him /her at a meeting which is considering a matter in which he/she holds a disclosable pecuniary interest. S.33 (2) confirms that a parish council may grant the dispensation, if having regard to all relevant circumstances, it considers that;-
- without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business or
 - granting the dispensation is in the interests of persons living in the council's area or
 - it is otherwise appropriate to grant a dispensation.
30. By virtue of s. 33 (4) of the 2011 Act a member is free to participate and vote at a meeting on the question of granting him/herself a dispensation which relieves him/her of the restrictions which apply to the matter in which he/she holds a disclosable pecuniary interest.
31. NALC's template code of conduct provides that when a meeting is considering a matter in which the member holds an interest in Appendix B, i.e. an interest which is not a

disclosable pecuniary interest, he/she may only speak on the matter if and when the public has a right to speak. A member is free to participate in and vote at a meeting on the question of granting him/herself a dispensation which relieves him/her of the restrictions which apply to the matter in which he/she holds an Appendix B interest.

32. A member's request for a dispensation must be in writing and submitted to the parish council's proper officer. Dispensations may be granted by full council, or it may arrange for this function to be discharged by a committee or a sub-committee or an officer pursuant to s. 101(1) of the 1972 Act. If full council (or a committee, or a sub-committee) has responsibility for considering/granting dispensations, it can deal with a member's written dispensation request at the meeting at which it is required by him/her. This arrangement would benefit members who realise that they need a dispensation only after they receive the agenda which confirms the business to be transacted. Dispensation requests may constitute a standing item of business for every council (or committee or sub-committee) meeting and should be dealt with after the names of those members present and absent (and approval, as appropriate, for absence) at the meeting have been recorded. Councils are recommended to adopt standing orders which confirm the procedure for the submission of dispensation requests. For example it would be reasonable for a council to have a standing order which requires members to submit their written dispensation request to the proper officer not less than e.g. 1 or 2 clear days before the meeting it is needed for. The standing order should confirm the meaning of a 'clear day'. For example, a clear day could take the meaning that the day on which the dispensation request was submitted and the day of the meeting, Sundays and Bank Holidays are not included.
33. Whilst a member must submit their request for a dispensation in writing to the proper officer, a council may prefer members to complete and submit a standard form. It is recommended that a member's request for a dispensation, whether or not using a standard form, includes the following information:--
- the name of the applicant;
 - the description (e.g. disclosable pecuniary interest or other) and the nature of the interest;
 - whether the dispensation is for the member to participate in a discussion only or a discussion and a vote.

- the date of the meeting or the period (not exceeding 4 years) for which the dispensation is sought and
- an explanation as to why the dispensation is sought.

Dispensations for certain disclosable pecuniary interests and other interests

34. There will be some business due to be decided at a parish council meeting, which most or all of the members present will have a disclosable pecuniary interest in (or another type of interest). For example, at a meeting setting the council's precept or deciding the council's response to a proposed development affecting the entire parish area, it is likely that many or all of the members live in the parish. In these examples, it is NALC's view that the members hold a disclosable pecuniary interest (arising from holding a beneficial interest in land or a licence to occupy land in the parish) and will, without a dispensation, be subject to the statutory restrictions which prevent them from participating in or voting at a meeting on such business. The statutory grounds listed in paragraph 28 above would permit a parish council to grant a dispensation to members. If the function of granting dispensation requests has been delegated to an officer pursuant to s.101(1) of the 1972 Act, dispensation requests made by many or all members of a council can be handled with relative ease. If the function has not been delegated to an officer, then members are free to participate and vote on the question to grant themselves dispensations (see paragraphs 24 and 29 above). In the example of a parish council meeting which is setting the precept, some Monitoring Officers share NALC's view that members hold a disclosable pecuniary interest. However some Monitoring Officers do not share NALC's view. NALC is also aware that 'the informal view' of DCLG is that members of a principal authority at a meeting which sets the council tax or members of a parish council at a meeting which sets the precept do not hold a disclosable pecuniary interest.
35. Notwithstanding different legal opinions as to whether or not a member holds a disclosable pecuniary interest in the examples given above, it is a criminal offence (see paragraph 36 below) for a member to participate and vote at a meeting on a matter in which he/she is deemed to have a disclosable pecuniary interest. If a member is unsure if he/she holds a disclosable pecuniary interest in a matter being considered at

a meeting and he/she wants to participate in a discussion and vote on the matter, the safest course of action would be for him/her to seek a dispensation. A dispensation will ensure that the member is not at risk of prosecution.

36. Although some Monitoring Officers may hold a contrary opinion, it is NALC's view that a member of a parish council or another local authority who receives an allowance by virtue of their public office holds a disclosable pecuniary interest. This particularly applies to members of parish councils who are also members of principal authorities and automatically receive an allowance from the principal authority. In NALC's template code of conduct, a member of a parish council that does not receive an allowance holds an interest in Appendix B. An Appendix B interest must be registered with the Monitoring Officer. A member may only speak at a meeting in respect of a matter that he/she holds an Appendix B interest in if and when the public has a right to speak unless he or she has first obtained a dispensation.

Criminal offences

37. Under s.34 of the 2011 Act, a failure to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or the deliberate or reckless provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which the member has a disclosable pecuniary interest will be criminal offences, potentially carrying a Scale 5 fine of £5000 and/or disqualification for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions.

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Circular No. 45/2012

To all Member Town and Parish Councils and Parish Meetings

GENERAL CIRCULAR

In this Circular:

- **Disclosable Pecuniary Interests, Dispensations and Precept Setting**
- **Clerk/RFO Vacancy – Duffield Parish Council**

1. **DISCLOSABLE PECUNIARY INTERESTS, DISPENSATIONS AND PRECEPT SETTING**

Attached is the revised NALC Legal Topic Note (LTN 80) 'Members' Conduct and the registration and disclosure of their interests'. This has been revised to more adequately deal with the current concerns over precept setting and dispensations.

However, it is still apparent that councils are seeking a definitive answer to the issue of Disclosable Pecuniary Interests (DPI) and precept setting. Unfortunately the only body that could provide a definitive answer is the Government, and in the absence of specific guidance from Government on this issue all we can rely on is legal opinion.

There is no consistency of legal opinion on this matter across local government. Both the Society of Local Council Clerks (SLCC) and the National Association of Local Councils (NALC) are of the clear legal opinion that councillors **do** have a Disclosable Pecuniary Interest when setting their councils precept.

Unfortunately as paragraph 35 of LTN80 makes clear, this whole matter is an issue for individual Parish Councillors. Nobody can instruct them what they must do (whether District/Borough Council, DALC, NALC, SLCC, or the council's clerk, for example), though we would suggest that if the two main sector bodies (SLCC and NALC) are of the legal opinion that precept setting **is** a DPI issue councillors would need to be very clear as to the grounds that they chose not to take that advice in order to protect themselves from any challenge. It is a criminal offence for a councillor to participate and vote on a matter in which he/she is deemed to have a

DPI. A failure to comply with requirements in relation to DPIs is **not** a Standards/Code of Conduct issue, it is a criminal offence. As such it would not be something that the District/Borough councils would deal with.

NALC and SLCC are of the opinion that if councillors are unsure if they have a DPI then the safest way to deal with this would be to seek a dispensation from their Parish/Town Council. This is easily done. Paragraph 34 of LTN80 covers how to do this.

The Cornwall Association of Local Councils has circulated a pro-forma which they have developed and which they are happy for other county associations to circulate to member councils and their clerks to use for requests for dispensations in the hope that it would make your lives a little bit easier. Please find the form attached for your council to use if you wish. This form can be used for ANY dispensation request from a member, not just those relating to precept setting.

Section 31(4) of the Localism Act 2011 states that dispensations may allow the Councillor :

- a) to participate, or participate further, in any discussion of the matter at the meeting(s); and/or
- b) to participate in any vote, or further vote, taken on the matter at the meeting(s).

The attached pro-forma allows the council to grant dispensations (or the clerk if this has been formally delegated to them by a resolution of council) for either or both (or none!) of the above. Any Councillor who wishes to apply for a dispensation must fully complete a Dispensation Request form and submit it to the Proper Officer of the council (i.e. The Clerk) as soon as possible before the meeting at which the dispensation is required. Applications may also be made at the parish council meeting itself (if parish councils have a standing item on the agenda to deal with dispensation requests and the nature of the interest has only become apparent to a councillor at the meeting itself). In other words, try and get councillors to complete the forms at the earliest opportunity rather than waiting till the evening of the meeting!

Our advice to member councils is to henceforth include a standing agenda item on their agendas along the lines of "To receive and approve requests for dispensations from members on matters in which they have a Disclosable Pecuniary Interest" or similar. This can be in addition to an existing agenda item "To receive declarations of interest" if you already have such a standing item on your agendas.

2. DUFFIELD PARISH COUNCIL - VACANCY FOR PARISH CLERK/RESPONSIBLE FINANCIAL OFFICER

A vacancy for a Parish Clerk and Responsible Financial Officer has become available.

The Clerk is the Proper Officer to the Parish Council. The Clerk's responsibilities include producing agendas and minutes for all council meetings and committees, liaising with outside bodies, actioning the council's decisions, acting as the council's financial officer and keeping the council's financial records. The Clerk will be required to work from the Parish Office and have their own transport.

The Clerk is responsible for the management of three staff (finance officer, cemetery superintendent and village warden).

The successful candidate should have: -

- good financial and bookkeeping skills, be computer literate (including Word, Excel etc).
- familiarity with local government law, procedures and finance, and it is desirable that they have the relevant qualifications (CiLCA) or the willingness to work towards achieving these.
- good organisational and interpersonal skills.

A good knowledge of the parish of Duffield and surrounding area would be an advantage.

Training will be offered as appropriate and remuneration will be based on experience, but within the NALC/SLCC Scale LC1/2 SCP 23– 34, £10.497 - £14.884 per hour.

The council would require the successful candidate to work some set hours, the total hours would be initially 20 hours per week. The council holds 11 parish council meetings and 9 committee meetings in one year, these are currently held on Wednesday evenings.

Closing Date: 14th December 2012

Interview Date: week beginning 7th January 2013

For more information and application pack please contact:

Chris Carter, Parish Office, Weston Centre, Tamworth Street, Duffield, Belper, Derbyshire, DE56 4ER

Tel: 01332 842740

Email: chris.carter@duffieldpc.org.uk

Duffield Parish Council Website: www.duffieldpc.org.uk

Sarita Presland
Chief Officer

November 2012

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DIARY DATE REMINDERS – TRAINING

DATE	SUBJECT	CIRCULAR REF	VENUE
27.11.2012	Café Cluster	44/2012	Calver
28.11.2012	Café Cluster	44/2012	Ashbourne
05.12.2012	Café Cluster	44/2012	Hayfield

All training places must be booked through DALC, who will issue a confirmation email close to the date of training.

*“Value for money, quality & responsive service to
Member Councils”*

PLEASE CHECK THE DALC WEB SITE FOR CURRENT TRAINING

www.dalc.org.uk

DISPENSATION REQUEST FORM

Please give full details of the following in support of your application for a dispensation. If you need any help completing this form please contact the parish clerk.

Your name	
The business for which you require a dispensation (refer to agenda item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate, or participate further, in any discussion of that business by that body	Yes / No
Dispensation requested to participate in any vote, or further vote, taken on that business by that body	Yes / No
REASON(S) FOR DISPENSATION	
33 a) without the dispensation the number of persons unable to participate in the transaction of business would be so great as to impede the transaction of the business	
33b) without the dispensation the representation of different political groups would be affected so as to alter the likely outcome of any vote	
33c) the dispensation is in the interests of persons living in the authority's area	
33e) that it is otherwise appropriate to grant a dispensation Reason :	

Signed: _____ Dated: _____

<p>DECISION : Dispensation Given : YES / NO LENGTH OF DISPENSATION : Date: Minute Number:</p> <p>Signed : Clerk to the Council</p>

AGENDA ITEM 10

STANDARDS COMMITTEE – 4TH DECEMBER 2012
HAMPSHIRE COUNTY COUNCIL

IN THE MATTER OF SECTION 30 AND SECTION 31 OF THE LOCALISM ACT 2011 – DISCLOSURE OF PECUNIARY INTERESTS ON TAKING OFFICE AND PECUNIARY INTERESTS IN MATTERS CONSIDERED AT MEETINGS OR BY A SINGLE MEMBER.

BRIEF TO COUNSEL TO ADVISE

Counsel has herewith :-

- (1) Copy of Code of Conduct for Members, approved by the County Council on 19 July 2012, pursuant to Section 27(2) of the Localism Act 2011.
- (2) Copy of letter dated 2 August 2012 from Paul Rowsell at DCLG, plus attached (undated) letter from Bob Neill MP and DCLG Guidance ‘Openness and Transparency on Personal Interests – A Guide for Councillors dated August 2012 enclosed therewith.
- (3) Copy previous Hampshire County Council Members’ Code of Conduct based on the Model Code of Conduct issued by the Secretary of State pursuant to the Local Authorities (Model Code of Conduct) Order 2007 (SI 2007 / 1159), in accordance with Section 50 of the Local Government Act 2000, and adopted by the County Council on 12 July 2007.
- (4) Guidance issued by the Standards Board for England ‘The Code of Conduct – Guide for Members, May 2007’ on the Model Code of Conduct referred to at Enclosure (3).

1. Provisions in respect of the conduct of Members and the registration and declaration of Members' Interests was, prior to the Localism Act 2011 ('the Localism Act'), as set out in Part III of the Local Government Act 2000 ('the 2000 Act'), and Regulations made thereunder. By virtue of the requirements of the 2000 Act, the County Council, together with other relevant authorities as specified at Section 49 (6) of the 2000 Act was required to adopt a Code of Conduct as regards to the conduct expected of Members and Co-opted Members of the County Council. A Model Code of Conduct was subsequently issued by the Secretary of State pursuant to the Local Authorities (Model Code of Conduct) Order 2007 made pursuant to Section 50 of the 2000 Act ('the 2007 Regulations'). This Model Code of Conduct is set out within the Schedule to the 2007 Regulations. By virtue of Paragraph 2(2) of the 2007 Regulations, all provisions of the Model Code of Conduct were mandatory for Hampshire County Council, being a County Council operating Executive Arrangements.
2. The Code of Conduct attached at Enclosure (3) ('the 2007 Code of Conduct') is based on the Model Code of Conduct contained within the Schedule to the 2007 Regulations and contains all mandatory provisions. The 2007 Code of Conduct was adopted by the County Council on 12 July 2007. Subject to one or two subsequent 'house styling changes', the 2007 Code of Conduct was in force until it was automatically revoked on implementation of the Localism Act Chapter 7 (Standards), by virtue of the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012.
3. As Counsel will note, the 2007 Code of Conduct contains at Part 2 ('Interests') and Part 3 ('Registration of Members' Interests') provision in respect of Members' Interests. Interests are referred to as 'Personal Interests' these are detailed at Paragraph 8 of Part of the Code. Paragraph 10 then sets out certain conditions which if met, make a Personal Interest of a Member both a

Personal and prejudicial interest. Instructing Solicitor would draw Counsel's attention to the advice from the Standards Board for England as contained at Enclosure 4 (pages 22 – 27) in this regard.

4. Paragraph 12 of Part 2 of the 2007 Code of Conduct deals with the effect of Prejudicial Interests in participation in business of the County Council, and is set out below for ease of reference.

Effect of prejudicial interests in participation

- 12 (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that that the business is being considered at that meeting;
- unless you have obtained a dispensation from your authority's Standards Committee;
- (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

The important point for the present case is that notwithstanding the fact that a Member may have a Prejudicial Interest in business being considered, such Member may still attend and address a meeting 'for the purpose of making representations, answering questions or giving evidence relating to the

business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise'. In practice this has been taken to bestow a right for a Member to speak where such Member is speaking in a personal capacity, or as a locally elected Member representing the views of his constituents. In such cases a Member would leave the room immediately after speaking, and would not participate in any discussion of or vote on the matter.

5. The Code of Conduct attached at Enclosure 1 was approved by the County Council on 19 July 2012 pursuant to Section 27(2) of the Localism Act.
6. As indicated at Paragraph 2 above, the 2007 Code of Conduct was automatically revoked on 1 July in consequence of implementation of Chapter 7 of the Localism Act. Unlike the previous position under Part III of the 2000 Act, and subject to it being when viewed as a whole consistent with the Nolan principles Leadership, the exact form of a Members' Code of Conduct under the Localism Act is a matter of local choice.
7. The new Code of Conduct must also divert to Section 28 (2) of the Localism Act include provision in respect of the registration and disclosure of Pecuniary Interests, and set provision as County Council considers appropriate in respect of Interests other than Pecuniary Interests which the County Council requires to be registered. A 'Pecuniary Interest' is defined at Section 30(3) of the Localism Act as being a Pecuniary Interest of a description specified in Regulations made by the Secretary of State, being either an interest of the Member concerned, or set Member's spouse or person they live with as husband and wife or civil partner. The relevant authority's (Disclosable Pecuniary Interest) Regulations 2012 (the 2012 Regulations) have been made by the Secretary of State, in force from 1 July 2012. Counsel will note that provision in respect of Personal Interests and Prejudicial Interests previously contained in the 2007 Code of Conduct are not repeated in the 2012 Regulations. Instead the 2012 Regulations specify a list of Disclosable Pecuniary Interests ('DPI's'). This list of DPI's is contained at Part 2, Paragraph 3 of the 2012 Code of Conduct.

Counsel is asked to advise on the following ;

- 1) The correct interpretation of Section 31 of the Localism Act. Does Section 31(4) and 31(5) of the Localism Act prevent a Member with a DPI in a matter being considered from addressing a meeting as a private individual or as a locally Elected Member and then withdraw from the meeting, in cases where a member of the public would be allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- 2) Is there any distinction between the position of a Member in a personal capacity and as a locally Elected Member representing the views of his constituents.
- 3) Does the position change if such Member is also a Member of the Committee or other body of the County Council considering the matter.
- 4) What is meant by the description within the description of DPI within the 2012 Regulations 'in the employment, office, trade, profession or vocation carried on for profit or gain', in particular with regard to the words 'office' and 'so far as this affects Members of the County Council in receipt of an allowance from the County Council, and Members of the County Council in receipt of an allowance from another public authority when considering that other authority's business.
- 5) To advise generally

Should Counsel require any further information or wish to discuss any point, then please contact Instructing Solicitor, Barbara Beardwell, Head of Governance and Monitoring Officer on 01962 845157 or barbara.beardwell@hants.gov.uk

you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise."

9. The 2007 Model Code has now ceased to have effect by virtue of the bringing into force (for material purposes) of Schedule 4 to the Localism Act by Article 5 of the *Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012*.
10. Provision is now made in respect of the conduct of Members and the registration and declaration of their interests under Chapter 7 of Part 1 of the Localism Act.
11. By section 27(2) of the Localism Act a relevant authority (which includes a County Council) is required to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.
12. Section 28 makes provision in relation to such codes of conduct. By section 28(2) a relevant authority is required to secure that its code of conduct includes the provision it considers appropriate in respect of the registration in its register, and disclosure, of pecuniary and other interests. Further provision is made in relation to these matters in sections 29-34. Although those sections do not limit what may be included in a code of conduct, nothing in a code of conduct may prejudice the operation of those sections (s.28(3)).
13. Section 29(1) requires the monitoring officer of a relevant authority to establish and maintain a register of interests of members and co-opted members of the authority. By section 29(2) it is, subject to the provisions of Chapter 7, for the relevant authority to determine what is to be entered into its register.
14. The concept of "prejudicial interests" under the 2001 and 2007 Orders has not been carried into the Localism Act. Instead, section 30 makes provision in relation to the disclosure of "disclosable pecuniary interests". Section 30(3) provides:
 - "(3) For the purposes of this Chapter, a pecuniary interest is a "disclosable pecuniary interest" in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either –
 - (a) it is an interest of M's, or
 - (b) it is an interest of –
 - (i) M's spouse or civil partner,
 - (ii) a person with whom M is living as husband and wife, or
 - (iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest."

15. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ("the Regulations") have been made under section 30(3) and came into force on 1 July 2012. The interests specified under the Regulations include "any employment, office, trade, profession or vocation carried on for profit or gain".

16. Section 31 of the Localism Act makes provision in relation to pecuniary interests in matters considered at meetings or by a single member. It provides, so far as material for present purposes:

"(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority—

(a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,

(b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and

(c) is aware that the condition in paragraph (b) is met.

(2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section 32(3).

(3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.

(4) The member or co-opted member may not—

(a) participate, or participate further, in any discussion of the matter at the meeting, or

(b) participate in any vote, or further vote, taken on the matter at the meeting,

but this is subject to section 33.

(5) In the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies and which is operating executive arrangements, the reference in subsection (1)(a) to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive.

[(6) – (9) omitted]

(10) Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate.

[(11) omitted]"

17. Section 33 provides for dispensations from section 31(4). It provides:

"(1) A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted

member from either or both of the restrictions in section 31(4) in cases described in the dispensation.

- (2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—
 - (a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 - (c) considers that granting the dispensation is in the interests of persons living in the authority's area,
 - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or
 - (e) considers that it is otherwise appropriate to grant a dispensation.
- (3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Section 31(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section."

18. Section 34 makes provision for various offences. By section 34(1)(b) it is an offence for a person, without reasonable excuse, to participate in any discussion or vote in contravention of section 31(4).

Factual Background

19. The Council adopted a Code of Conduct pursuant to section 27(2) of the Localism Act on 19 July 2012. Part 3 of that Code addresses the registration and disclosure of disclosable pecuniary interests. Paragraphs 1.5 and 1.6 provide:

"1.5 Unless a dispensation has been granted by the County Council, 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 (save for in circumstances set out in Paragraph 1.6 below) withdraw from the chamber or 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.

1.6 Without prejudice to Paragraph 1.5 above where you have a disclosable pecuniary interest in any business of the County Council (including any meeting of a Select Overview and Scrutiny Committee of the County Council) you may, notwithstanding such disclosable pecuniary interest, attend such meeting for the purpose of making representations, asking 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."

20. The wording of paragraph 1.6 is taken from paragraph 12(2) of the 2007 Model Code which was previously in force. As set out at paragraph 9 of my instructions, in adopting the 2012 Code, the Council considered that it (including paragraph 1.6) was consistent with the Localism Act.

21. However, since the Council adopted its 2012 Code, the Department for Communities and Local Government ("DCLG") has issued guidance for councillors on "openness and transparency on personal interests". The guidance is non-statutory and the first footnote on page 1 emphasises that it should not be taken as providing any definitive definition or the statutory requirements. Page 5 of the DCLG guidance contains the following passage:

"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"

22. The statement "these prohibitions apply to any form of participation, including speaking as a member of the public" is inconsistent with paragraph 1.6 of the 2012 Code. It is in these circumstances that my advice on issues 1 to 3 is sought.

Question 1

23. Paragraph 1.6 of the 2012 Code is consistent with section 31(4) of the Localism Act. The key word in section 31(4) is "discussion", i.e. an "examination (of a point) by argument etc.; debate; an exchange of views; a conversation" (SOED). In my view "any discussion" for the purposes of section 31(4) is a reference to the discussion by the

members of the committee or other body determining the issue. It does not, therefore, extend to a member who is not engaged in determining the issue from making representations and providing evidence to the meeting (including questioning the evidence and representations of others).

24. This reading is supported by the statutory background to the provision, viz. the 2007 Order having introduced a new paragraph 12(2) to the model code following a perceived problem with the 2001 Order. Given this background, one would expect clear terms in section 31 if it was designed to preclude "any form of participation, including speaking as a member of the public". The better reading of s 31 does not preclude all such participation. The conclusion to the opposite effect from DCLG is misplaced. Moreover, given its non-formal status, it does not need to be followed. I emphasise that, in order to demonstrate compliance with section 31(4), the distinction between a member's activities in discussion/voting (on the one hand) and his activities in making representations/giving evidence/questioning (on the other) should be appropriately signified by clear procedures (e.g. the member with the DPI sitting apart from other members, his role being made clear in the agenda and withdrawal at the same time as members of the public).

Question 2

25. I consider that there is no distinction for the purposes of section 31(4) between a member acting in a purely personal capacity and one acting in a representative capacity and my view on issue 1 is the same in each case. Section 31(4) is directed at precluding a member with a DPI and no dispensation from participating in the discussion and voting. It is not directed at restricting other forms of participation depending on the capacity in which the member acts.

Question 3

26. My analysis on issues 1 and 2 is the same whether or not the member with a DPI and no dispensation is also a member of the committee or other body considering the matter. However, where the member with a DPI is a member of the body, particular care will be needed in signifying his limited role.

Question 4

27. In order to advise conclusively on issue 4, I would need precise details of the allowance schemes in place. However, on my general understanding of such schemes it seems to me that although being a Councillor is likely to be an "office" for the purposes of the 2012 Regulations, the receipt of an allowance is compensatory (relating to time spent and expenses incurred) and therefore not "carried on for profit or gain" for the purposes of the 2012 Regulations. On that basis, such allowances would not be DPIs.

28. My view on this issue is strengthened by section 33(2)(a) of the Localism Act. If allowances were DPIs, it seems to me a dispensation would routinely be available under this provision. In those circumstances, it would be odd for a DPI to have been created requiring dispensation (which would be required to enable the Council to function) as a matter of routine.

Question 5

29. In my view, nothing in the Localism Act requires an authority to distinguish in its register the disclosable pecuniary interests of Members under section 30(3)(a) and those under section 30(3)(b). Further, where a disclosable pecuniary interest arises under section 30(3)(b) nothing in the Localism Act requires the spouse, civil partner etc. to be named on the register. There is no specific provision to require this and section 29(2) emphasises that subject to the provisions in Chapter 7, it is "for the relevant authority to determine what is to be entered in the authority's register".

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15 October 2012

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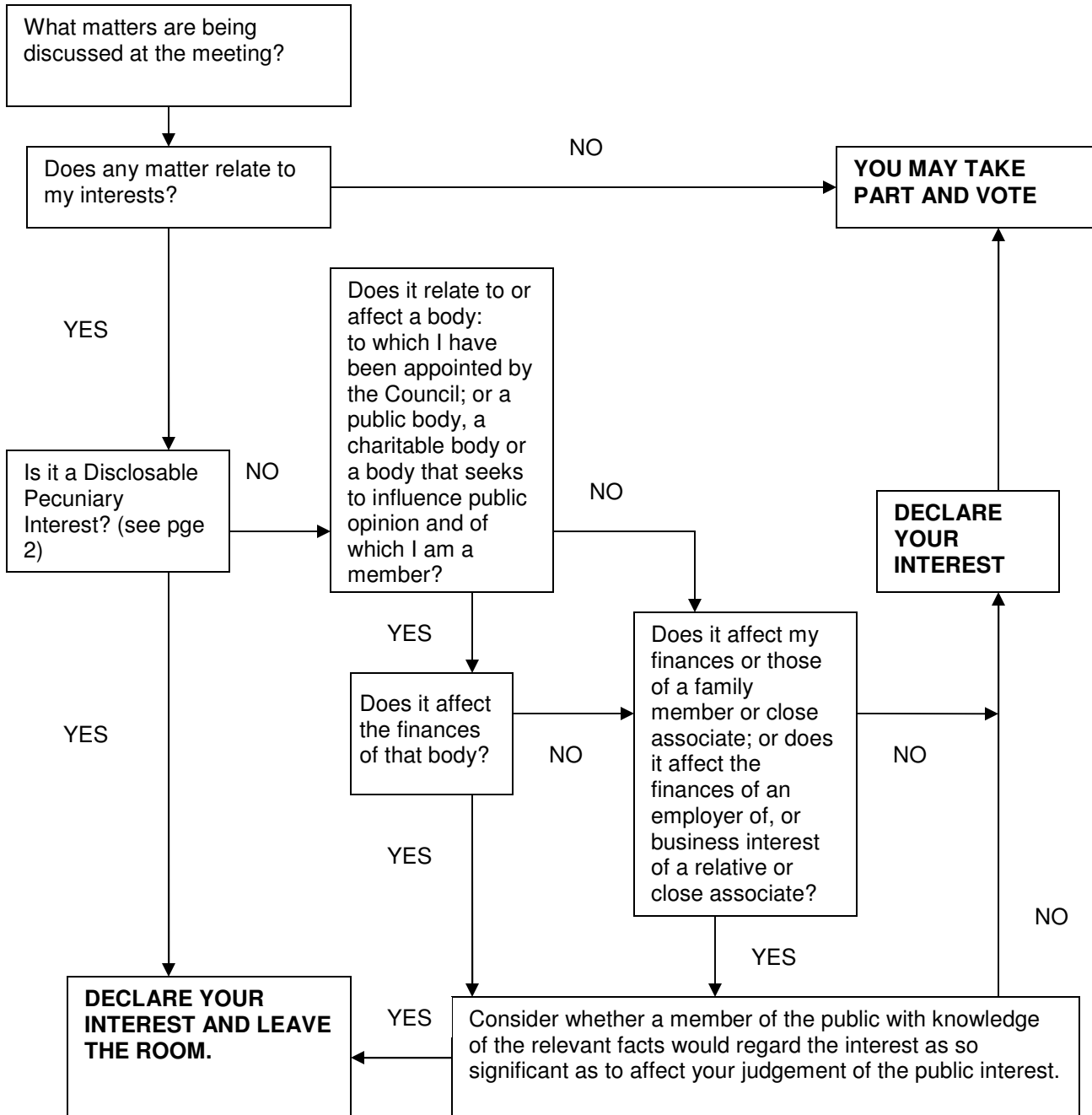
IN THE MATTER OF SECTIONS 30-31 OF THE
LOCALISM ACT 2011

OPINION

Barbara Beardwell
Head of Governance & Monitoring Officer
Hampshire County Council
Winchester

Tel: 01962 - 845 157
email: barbara.beardwell@hants.gov.uk
Ref:

DECLARING INTERESTS: A GUIDE.



IMPORTANT NOTE: If you need guidance on interests or declarations please speak to the Monitoring Officer or one of her team prior to the meeting.

What are Disclosable Pecuniary Interests?

DPI's are the interests of Members and their Partners that must be registered with the Monitoring Officer.

The classes of DPI are set out in full on your Register of Interests form. In summary they are the financial interests of you and your spouse/partner in respect of:

- **Employment, office, trade, profession or vocation (for profit or gain)**
- **Sponsorship (including election expenses)**
- **Contracts (with the Council)**
- **Land (owned or leased in the Council's area)**
- **Licences (to occupy land)**
- **Tenancies held by Companies in which the member has a beneficial interest (where the landlord is the Council)**
- **Securities (shares etc in a business operating in the Council's area).**