



**THE LOCALISM ACT 2011 AND THE NEW STANDARDS REGIME
INCORPORATING A CODE OF CONDUCT FOR MEMBERS**

MONITORING OFFICER BRIEFING NOTE

Introduction

As Members will know, on 10th July 2012 the Council debated my report in relation to the new standards arrangements under the Localism Act 2011, and the following decisions were taken:-

- (a) That the Code of Conduct set out at Appendix 'B' to the circulated report be adopted as the Council's Code of Conduct, effective from 1st July 2012 (it being noted that such Code is based on the text of the Council's current Code of Conduct with the deletion of the section on Members' Interests and its replacement by the provisions of The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012), until such time as a Gloucestershire-wide Code is agreed between the various authorities;**
- (b) that the Audit Committee takes on responsibility for code of conduct/standards matters, including any necessary role insofar as the determination of complaints regarding the conduct of Members is concerned;**
- (c) that complaints be dealt with in accordance with the complaints procedure flow-chart attached at Appendix 'C' to the circulated report;**
- (d) that, pending the appointment of new independent persons, the independent members of the former Standards Committee be invited to perform the role of 'independent persons' for the purpose of being consulted by the Monitoring Officer on any complaints received regarding the conduct of Council Members;**
- (e) that the Monitoring Officer be given delegated authority, in consultation with the Chairman of the Audit Committee and one of the independent persons, to determine applications for dispensations in respect of District Councillors;**
- (f) that the action of the Chief Executive pursuant to Council Procedure Rule 38 to agree an interim Code for the period 1st - 10th July 2012, in consultation with the Leader of the Council, be noted;**
- (g) that the Head of Democratic Services be authorised to make the consequential changes to the Constitution.**

For ease of reference, copies of the Code and complaints procedure flow-chart are attached to this Briefing Note.

The purpose of this Briefing Note is to confirm the detail of the new regime, so that Members can understand what is expected of them in the future.

Background Information and Context

The Localism Act 2011 proposed significant changes to the regime covering the standards of behaviour and conduct of elected and co-opted members. The national body *Standards for England* was abolished with effect from 1st April 2012, signalling the end of the then existing standards regime for local authority members. Final Regulations confirming the detail of the new class of interest to be registered and disclosed were laid before Parliament on 8th June and the new provisions as contained in the Localism Act 2011 came into force on 1st July 2012.

A Code of Conduct for Members

The Act contains an overarching general duty on local authorities to promote and maintain high standards of conduct by its elected and co-opted members, with a specific mandatory requirement to adopt a code of conduct which, when viewed as a whole, is consistent with the seven Nolan principles of public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and which will deal with the conduct of members expected of them *when acting as members*. This means that only members' conduct whilst performing their functions as councillors can be regulated by the Code, a departure from the previous arrangements under the Local Government Act 2000 (as amended). Once adopted, a Code may be replaced or revised as necessary, a provision that has afforded the Council the opportunity to adopt its previous Code under the old law as an interim measure for the purpose of the new law, except insofar as it is inconsistent with the new law. This interim measure includes not only the Code of Conduct for members, but also both the register of their interests and the arrangements under which allegations of breach of the code may be investigated.

'Disclosable Pecuniary Interests' ('DPIs')

Broadly speaking, this new definition creating a new class of interest corresponds to the detail of existing personal interests, save with regard to the membership of other public bodies. The boxed text below and overleaf contains the precise wording of the various classes of interest included within the statutory definition. Members will be required to declare DPIs of which they are aware at a meeting, where any matter to be considered relates to such an interest, *and* that interest has not already been entered on the register I am required to maintain (on which see below for further detail). Whether this relates only to members of the relevant committee, or also includes, for example, other members sitting in the public gallery to observe proceedings, is not clear. Where such an interest is disclosed or has already been registered, the member may not participate further in any discussion on the matter, or vote. It is the Council's approach that a member disclosing such an interest must leave the room while the matter is debated or voted on.

THE NEW CLASS OF 'PECUNIARY INTEREST'

Employment, office, trade, profession or vocation

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

Sponsorship

Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expense of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Contracts

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority (a) under which goods or services are to be provided or works are to be executed and (b) which has not been fully discharged.

Land

Any beneficial interest in land which is within the area of the relevant authority.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Corporate Tenancies

Any tenancy where (to M's knowledge) (a) the landlord is the relevant authority and (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Note: M = Member

The new rules contain specific provisions relating to the publication of 'sensitive interests' where there is a risk that disclosure may lead to the member concerned being subject to violence and intimidation; and general dispensations may be granted in certain circumstances. I would urge any member who is concerned about the question of sensitivity to discuss the issue with me or the Deputy Monitoring Officer or another member of the legal team.

Registration and Disclosure of DPIs

A Council's Code must include provision for the registration and disclosure of pecuniary and non-pecuniary interests, with responsibility for establishing and maintaining this resting with the Monitoring Officer.

Each authority may determine what is to be entered in the register (over and above the statutory DPIs) - in 'rolling forward' its existing arrangements as an interim measure, the requirements insofar as the registration/declaration of interests remains as before subject to the required amendments relating to DPIs. Such requirements will be revisited when a new Code is presented to Members in due course.

DPIs must be registered within 28 days of a member being elected but interestingly, the Act says nothing about such interests being required to be registered within a period of time relative either to the adoption of a code or the interest coming into existence, such that on the face of it, members will only need to notify register interests after the District Council elections in May 2015 (or earlier in the case of any by-election). However, there is separate provision for a new DPI that is not already registered to be disclosed at any meeting where it arises and *then* registered 28 days thereafter.

It is understood that the DCLG have recognised this omission, and are likely to introduce relevant primary legislation at the earliest opportunity. As a result, revised forms will be produced and issued to members for completion.

I would however urge members to get in touch, either with me, the Deputy Monitoring Officer or anyone else in the legal team, if there are any queries on the definition of DPIs.

Whose Interests are Covered by the Law?

It is very important for members (and a member is referred to as 'M' here) to be clear that it is not only *their own* interests that need to be disclosed and registered, but that the new provisions also cover DPIs of:-

- M's spouse or civil partner;
- a person with whom M is living as husband and wife; or
- a person with whom M is living as if they were civil partners.

In these three cases, the member concerned must be aware that the other person has the relevant interest.

The Criminal Law

Members should also note that a new criminal offence is introduced under the Localism Act 2011 of failure to register a DPI or to participate in the consideration of any matter in which the member has a DPI without reasonable excuse. Further, it is also a criminal offence to provide false or misleading information in relation to DPIs, or to be reckless as to whether such information is true and not misleading. However, prosecutions may only be instituted by or on behalf of the Director of Public Prosecutions. If found guilty, members can be fined up to level 5 on the standard scale (currently £5,000) and may face disqualification for a period of up to five years.

Breaches of the Code

Under the new law, a council must also have in place arrangements by which allegations of breach of the code of conduct can be investigated, and by which decisions on allegations can be made, which must include a role for an 'independent person' (see below). Further, a failure to comply with the code will not *of itself* invalidate any decision made. Apart from this, councils are free to make their own

arrangements for investigating and determining complaints. However, the position as to the consequences of breach is far from clear. A council *may have regard* to the breach in deciding whether or not to take action and if so, what action to take, which on the face of it appears to grant a discretion on whether to act in the first place and if so, the nature of that action. Interestingly, however, the new law is silent on what form such action may take, or in respect of any appeals procedure. There is no power for a council to suspend its members, although options do exist for some degree of self-regulation - for example, a council can censure; recommend removal from Cabinet, committee and sub-committee membership; require the Monitoring Officer to provide training; or withdraw the use of Council premises and facilities (but not exclusion from meetings). The lack of an appeal mechanism may well provide challenges with regard to the rules of natural justice.

The Role of the 'Independent Person'

Under the old regime, the rules provided for the appointment of independent members to standards committees, and those members played a full role in the life of that committee. It was also a requirement for those independent members to sit on the assessment and review sub-committees whenever allegations of breach of the old code were considered. Now, councils must appoint an 'independent person' or persons whose views must be sought before a decision is taken in relation to an allegation of misconduct. Members who have had allegations made against them may also seek the views of the independent person. Some commentators have expressed the view that the duality of this role might present a risk of potential conflict of interest if there is only one such independent person. That apart, the role of the independent person within the new arrangements is likely to be less onerous than the existing role of an independent member of the previous standards committee. Independent persons are to be appointed by submission of an application after advertisement, although transitional provisions allow the appointment of the four immediate past independent members of the Standards Committee as independent persons to fulfil that role with effect from 1st July 2012 for a transitional period of up to 12 months. This arrangement was supported and agreed by the Council at its meeting held on 10th July, as this would enable the Council to enter the new arrangements with the benefit of the significant experience and expertise they had built up during their time on the committee. As the new arrangements begin to take effect with the passage of time, including revision and amendment as necessary, those former members will be on hand to offer advice and to discharge the role of independent person required by legislation. In addition, in order to overcome the potential for a conflict of interest as identified above, the view of one independent person will be sought by the Council and taken into account before a decision is taken in relation to any matter that is the subject of an investigation, a second will be on hand to advise the subject member as required, and the third/fourth will be held in reserve.

These independent persons will also be able to give the benefit of their experience, expertise and advice as the Council considers its permanent arrangements in due course.

The Future

There is significant scope for exercising discretion in establishing new arrangements, subject to there being no derogation from the base principles relating to (i) the declaration and registration of DPs, (ii) the non-participation in debate and voting on the part of members where relevant business is being conducted and (iii) the involvement of an independent person.

Many members across the County have consistently expressed the aspiration that, in the absence of a nationally applicable process, there should be as much consistency as possible between the seven primary councils within Gloucestershire. If there is to be clarity and public confidence in the new arrangements, and if members are to be subject to consistency across local government in the standards of conduct expected of them (particularly for members of more than one primary council, i.e. county and a district, city or borough, or more than one primary council and a town/parish council), it is considered that this must be a highly desirable outcome. If consistent arrangements *can* be agreed across the councils (and discussions are on-going), this will represent a good example of effective, pragmatic, sensible and collaborative joint working within the public sector, in a way that will bring certainty and consistency for members and the public alike. It was also against this background that the Council took the decision on 10th July to adopt *interim* arrangements enabling compliance with the current law but also permitting a process of discourse and hopefully agreement to be reached between the seven councils leading to a consistent set of arrangements, which might then be agreed by those councils during their respective decision-making processes in, say, the Autumn.

In any event, it is submitted that whatever the outcome of those negotiations between the seven councils, it will be in the best interests of good governance for this Council to adopt arrangements to replace the interim ones no later than the November Council meeting. As part of this decision-making process, options for a new code will be presented to members for approval, along with any changes considered necessary to the arrangements for investigating and determining complaints, as well as recommendations for the appointment of an independent person or persons to discharge the functions required by the new law.

In the event that discussions between the seven primary councils do not produce a consistency of approach, the need for clarity, transparency and certainty in this Council's procedures for regulating the conduct of members is likely to dictate that the Council establishes its own arrangements no later than at the November Council Meeting.

To sum up - in very broad terms, the newly created disclosable pecuniary interest matches the current definition of personal interest. Under the previous arrangements, if that personal interest became a prejudicial one, a member must absent him/herself from the meeting when a prejudicial interest arose; under the new provisions, a member may not participate in any discussion or vote on a matter about which s/he has a disclosable pecuniary interest and should absent him/herself from the meeting.

I do hope that this briefing note will be of help to members in charting a course through the new law. As always, I am here to help with any queries, questions or concerns.

18th July 2012

Bhavna Patel
Monitoring Officer

Telephone: 01285 623219
E-mail: bhavna.patel@cotswold.gov.uk