



EAST BOLDRE PARISH COUNCIL

THE LOCALISM ACT 2011 - STANDARDS

1. INTRODUCTION

- 1.1 Provisions in the Localism Act 2011 significantly amend the current standards regime. The National Regulatory body Standards for England (the Standards Board), and statutory local Standards Committees, are abolished.
- 1.2 All Councils have a statutory duty to promote and maintain high standards of conduct by their members.
- 1.3 The Act also includes provisions under which local Councils need to make resolutions. These are:
 - (a) a requirement to adopt and publicise a new Code of Conduct (and for District Councils to adopt procedures for dealing with complaints against members, including Parish Council members, under the Code) (see section 2 below);
 - (b) amended requirements for registering and disclosing interests (see section 3 below). In particular the concept of "personal" and "prejudicial" interests is abolished, and replaced with a statutory requirement to register and disclose certain specified pecuniary interests, failure to comply with which will be a criminal offence. Councils also need to decide what other interests (pecuniary or non-pecuniary) should be registered and disclosed, although failure to register/disclose these will not be a criminal offence;
 - (c) amended provisions for granting dispensations (see section 4 below).
- 1.4 The new legislation comes into force on 1 July 2012.
- 1.5 This report brings together recommendations for a way forward on each of the matters set out at paragraph 1.3 above.

2. NEW CODE OF CONDUCT

- 2.1 Under the Localism Act 2011, all Councils are required to adopt a Code dealing with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity. The wording of the Code is not prescribed, as it was under the 2000 Act. However it must, when viewed as a whole, be consistent with the following principles:
 - selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty;
 - leadership.
- 2.2 The Act also requires Councils to secure that its code of conduct includes the provision the Council considers appropriate in respect of the registration and disclosure of pecuniary, and non-pecuniary, interests.

- 2.3 The Act also prescribes that a Parish Council may comply with these requirements by adopting the Code adopted by its principal authority (that is, New Forest District Council), and may assume that the District Council's Code complies with the statutory requirements.
- 2.4 Attached at Appendix 1 is the Code of Conduct adopted by New Forest District Council. Members will note that many of the provisions of the existing Code (other than the registration and disclosure of interests) are included in the District Council's new Code but that, where possible, the wording of the corresponding provisions in the existing Code has been simplified. The District Council have stated that the main principle applied when drafting this Code has been to set clear rules by which members' conduct is measurable.
- 2.5 The attached Code does not contain any provisions relating to the registration or disclosure of interests. The District Council has resolved that this is not necessary, as criminal sanctions can apply where members fail to comply with the law as it relates to registering and disclosing pecuniary interests, and requirements for the registration and/or disclosure of other interests (failure to comply with which may well be an oversight that should not bring the Code of Conduct and its formal complaints procedure to bear) are more appropriately dealt with through Standing Orders. (See section 3 below). Further, any deliberate failure to disclose an interest, with the intention of influencing the outcome of a decision, may well bring paragraph 1 of the proposed Code into play.
- 2.6 The District Council will still be responsible for dealing with complaints that a Parish Councillor has not complied with the Code. However, members who are found to have failed to comply with the Code can no longer be disqualified or suspended from office, or forced to apologise or undergo training or mediation. The only sanctions remaining are censure, formal "naming and shaming", or removal of the member from a Committee or Council appointment (the latter can only be done by the Parish Council, on the recommendation of the District Council).
- 2.7 Once this Council has adopted a new Code, it is required under the Act to publicise its adoption in such manner as it considers is likely to bring it to the attention of persons who live in its area.
- 2.8 Recommended:**
- (a) **That the Code of Conduct attached at Appendix 1 to this report be adopted with immediate effect; and**
- (b) **That the new Code be publicised on the Council's website.**

3. REGISTRATION AND DISCLOSURE OF INTERESTS

- 3.1 From 1 July there is no legislation, apart from that explained in paragraphs 3.2.1 to 3.2.4 below, governing the registration or disclosure of interests. In the absence of such provisions either in the law or the Code of Conduct, any rules the Council wishes to make should be included in Standing Orders. Accordingly, some Standing Orders to cater for the registration and disclosure of interests are proposed in the recommendation at 3.7 below.

3.2 Disclosable Pecuniary Interests

3.2.1 The Act prescribes certain "disclosable pecuniary interests" (DPI), and lays down what action members who have a DPI are required to take. A list of DPIs has been prescribed by Regulations. They are similar to the financially based personal interests that had to be registered and disclosed before 1 July 2012. They are:

- Employment
- Sponsorship
- Contracts (with the Parish Council)
- Land (within the Parish)
- Licences related to land (within the Parish)
- Corporate tenancies (within the Parish)
- Securities (in a body based in the Parish).

- 3.2.2 One important new provision is that members are required to register and disclose not only their own interests that fall within 3.2.1 above, but also those of their spouse, civil partner, or person they are living with as spouse/civil partner, so far as they are aware that that person has the interest.
- 3.2.3 Under legislation, failure by a member to disclose a DPI in the way laid down in the Act, or to speak at a meeting or participate in decision making when they have a DPI, will be an offence punishable by a fine and/or disqualification from office. Prosecutions can only be undertaken by the Director of Public Prosecutions. (Private prosecutions by aggrieved individuals are not permitted),
- 3.2.4 The Act as it relates to DPIs is quite complex. They must be disclosed: (a) to the Monitoring Officer (who will enter them in a register) within 28 days of taking office (but not following re-election if they are already registered); (b) at a meeting, if they have not previously been registered; (c) in writing within 28 days of a disclosure under (b).
- 3.2.5 In simple terms this means:
 - i. There is no longer a statutory obligation on members to keep their register of interests up to date with changes that happen after they first became a Councillor, unless and until an unregistered DPI arises at a meeting.
 - ii. Where an interest is entered in the register, there is no longer a statutory obligation to disclose it orally at a meeting.
- 3.2.6 It should also be noted that, under the Act, a member with a DPI will no longer be able to make a statement on the matter in which they have an interest before withdrawing from the meeting. Conversely, there is no statutory requirement to withdraw from the meeting room, so long as the member does not speak or vote.

3.3 Non-pecuniary interests

- 3.3.1 The Localism Act does not specify whether, and if so what, non-pecuniary interests have to be disclosed. It is up to individual Councils to make provision for this. At present, some interests that are not pecuniary have to be registered and disclosed. These are membership of bodies (a) to which the Council has appointed you; (b) which exercise functions of a public nature; (c) which are directed to charitable purposes, and (d) one of whose principal purposes includes the influence of public opinion (these are currently specified as including membership of political parties and trades unions).
- 3.3.2 If the Council were to decide that members need not disclose non-pecuniary interests, the result will be that Councillors who are members of organisations such as strong pressure or lobby groups will be able to speak and vote on matters on which that group campaigns, without their interest being brought to formal public attention. Where the Council is empowered to make a decision on a matter, this could potentially lead to applications for judicial review on the basis that there was bias on the part of a member participating in the decision. Members may therefore consider it wise to make provision in Standing Orders for the registration and disclosure of non-pecuniary interests, in the same way as at present.
- 3.3.3 So long as non-pecuniary interests are registered and disclosed, that would not of itself be a bar to members with such an interest participating in the decision-making process, subject to common law rules on bias and predetermination.

3.4 Interests of Relatives, Friends and Close Associates

- 3.4.1 The Act requires members to disclose the DPIs of their spouse or civil partner or person with whom they are living as such. However, where the financial affairs of another relative, friend or close associate could be affected by a Council decision, there is no longer a statutory obligation to disclose this.

3.4.2 To guard against accusations of bias under common law, it is considered that Standing Orders should require disclosure of interests of this type (which by law had to be disclosed under the previous regime).

3.5 Registration and Disclosure of Interests Generally

3.5.1 In the interests of openness, and to avoid confusion among the public who may be attending meetings and may not have inspected the register of interests beforehand, it is proposed that the current statutory rules requiring members to keep their register of interests up to date, and to disclose interests at meetings even when they are already entered in the register, be continued through amendment of, and addition to, Standing Orders.

3.6 Publication of Register of Interests

3.6.1 The register of interests is now by law required to be published on both the District Council's and the Parish Council's website.

3.7 Recommended:

That new Standing Orders be adopted as follows:

"Members' Disclosable Pecuniary and Non-Pecuniary Interests

(a) **All members shall disclose to the Monitoring Officer their disclosable pecuniary interests, as required by legislation.**

All members shall disclose to the Monitoring Officer their non-pecuniary interests that comprise the membership, or position of general control or management, of any body:

(i) **to which the Council has appointed or nominated them; or**

(ii) **exercising functions of a public nature; or**

(iii) **directed to charitable purposes; or**

(iv) **one of whose principal purposes includes the influence of public opinion or policy.**

The Monitoring Officer shall record all such disclosures in a Register of Interests.

The Register shall be open to public inspection and as a matter of law has to appear on the Council's and the District Council's websites.

Members shall notify any changes to the above disclosable pecuniary interests and non-pecuniary interests to the Monitoring Officer within 28 days of the change occurring, and the Monitoring Officer will amend the Register accordingly.

(b) **Any member who has a disclosable pecuniary interest, or a non-pecuniary interest falling within (a) above, in any matter that a meeting is considering, shall disclose the existence and nature of that interest to the meeting. The disclosure shall be at the beginning of the consideration of the matter, or when the interest becomes apparent.**

If the interest is a disclosable pecuniary interest the member shall not speak or vote on the matter unless a dispensation has been granted enabling him or her to do so.

If the interest is a non-pecuniary interest, the member may speak and vote, unless prohibited from doing so by common law principles relating to bias and predetermination ((c) below).

Where a relative, friend or close associate of a member has an interest in a matter coming before a meeting of the Council and that interest is of the same nature as a disclosable pecuniary interest set out in legislation, and the member is aware of the existence of that interest, the member shall disclose the existence and nature of that interest to the meeting. The member may only participate in the meeting to the extent permitted by the rules set out in (c) below, (relating to participation in situations where the common law rules of bias and predetermination apply).

- (c) **Where a member is prohibited from participating in a decision under the common law rules relating to bias and predetermination, the member must move to a designated area of the meeting room set aside for members who do not intend to vote, declare their position and explain that they will not be voting. They may then make a statement and answer any questions, and may remain in the meeting for the duration of the business. As well as not voting, the member must not move or second any recommendation.”**

4. DISPENSATIONS

- 4.1 A member with a disclosable pecuniary interest can apply for a dispensation which, if granted, would enable him or her to speak and/or vote at a meeting on a matter in which he or she has an interest. The District Council will no longer be responsible for deciding applications for dispensations from Parish and Town Councillors. It is therefore necessary for this Council to approve its own arrangements for dealing with requests for dispensations from its own members.
- 4.2 The grounds on which dispensations may be granted have also been amended. A dispensation is now possible if the Council (or the person to whom the Council delegates power to make decisions on dispensations) considers that:
- (a) the number of members prohibited from participating would be so great a proportion of the Council or Committee concerned as to impede the transaction of the business; or
 - (b) without the dispensation the representation of different political groups on the Council or Committee would be so upset as to alter the likely outcome of any vote; or
 - (c) granting the dispensation is in the interests of persons living in the Council area; or
 - (d) it is otherwise appropriate to grant a dispensation.
- 4.3 However, this does not mean that requests for dispensations should automatically be granted. In particular, issues relating to the common law rules on bias and predetermination may arise and will need to be taken into account.

4.4 Recommended:

That the following power be delegated to the Parish Clerk:

“To be the proper officer for the purpose of requests for dispensations under section 31(4) of the Localism Act 2011, and, in consultation with the Chairman of the Council (or Vice-Chairman in the event of a conflict of interest), to decide whether to grant a dispensation to enable the member concerned to participate in the discussion, or to vote, or both”.

EAST BOLDRE PARISH COUNCIL

EXPLANATORY NOTE FOR COUNCIL MEMBERS

The Model Code of Conduct – An Explanatory Leaflet Relating to Personal and Prejudicial Interests

INTRODUCTION

Whenever the Members' Code of Conduct ('the Code') is under discussion inevitably questions will arise in relation to the twin issues of personal and prejudicial interests. These matters, more than any other aspect of the Code, give rise to repeated confusion and misunderstanding often leading to unsubstantiated complaints, distress for Councillors, and occasionally waste of resources.

THIS SHORT LEAFLET IS NOT INTENDED TO REPLACE THE CODE BUT SHOULD BE READ IN CONJUNCTION WITH THE CODE AND IS PRIMARILY AIMED TO GUIDE MEMBERS IN THE RIGHT DIRECTION AND TO ESTABLISH BASIC PRINCIPLES.

In Parts 2 and 3 of the Code at paragraphs 8-13 inclusive will be found the detailed provisions which set out the various long list of inclusions and exclusions relating to personal and prejudicial interests and the register of interests and these will need to be consulted in any given set of circumstances. The first working principle to establish is the basic concept that no prejudicial interest can arise unless it is first established that a personal interest exists ie it is a two part test. The Councillor must consider first 'Do I have a personal interest (in the business on the agenda)? If the answer to that question is 'No' – then that is the end of the matter. If on the other hand the answer is 'Yes' or 'Very Likely' then the member must go on to consider if that personal interest can be construed as being also a prejudicial interest.

PERSONAL INTERESTS

In all Council and Council Committee meetings Councillors (Unitary/Town/Parish) must, where appropriate, declare a personal interest to be recorded in the minutes of the meeting. You must declare this at the start of the meeting or as soon as it becomes clear to you that a personal interest exists.

IF YOU DECLARE A PERSONAL INTEREST YOU CAN REMAIN IN THE MEETING, SPEAK AND VOTE ON THE MATTER, UNLESS YOUR PERSONAL INTEREST IS ALSO A PREJUDICIAL INTEREST.

You have a personal interest where it involves;

- a. An interest you have registered. All Councillors must within 28 days of taking up their office sign a Declaration of Interests. (Any changes in your interest must similarly be recorded within 28 days of the change). The Clerk or Monitoring Officer can give you guidance if you are not sure. However you need to declare on the Register your membership of other Local Authority bodies and any bodies exercising functions of a public nature, as well as your job, any gifts over £25, any contracts between yourself and the local authority. (Please see Appendix 1).
- b. Where the well-being, or financial position of you, members of your family, or people with whom you have a close association is likely to be affected by the business of the meeting more than it would affect most people in the area. If your interest arises solely because you are a member of another body in the authority eg school governor or any public body in another authority, you do not need to declare an interest unless you wish to speak on the matter. If you do not speak you may still vote without making a declaration. (See appendix 2)

PREJUDICIAL INTERESTS

In some circumstances your Personal Interests may also be considered to be Prejudicial. In this situation you need to declare the fact that you have a Prejudicial Interest and its nature before the issue is debated. YOU SHOULD THEN LEAVE THE ROOM, unless members of the public are allowed to make representations, give evidence, or answer questions on the matter. Once you have finished speaking or when the meeting decides you have finished, you cannot remain in the meeting and must leave. You cannot remain and observe the vote.

Your personal interest will also be a prejudicial interest if all of the following conditions are met –

- (1) The matter being discussed affects your financial position or that of any person with whom you have a personal interest.
- (2) Where a member of the public who knows the relevant facts would reasonably think your personal interest is so significant that it may prejudice your judgement.
- (3) It does not fall into one of the exempt categories (please refer to appendix 3).

CONCLUSION

The decision to declare an interest will always turn on the particular facts and it is clearly necessary for all Councillors to grasp the rationale and thinking behind the Code and if in doubt seek advice from your clerk or the monitoring officer.

APPENDIX 1

Register of Interests

All councillors are required to provide a record of their interests in a public register of interests. This must be completed within 28 days of taking office, and any changes must be recorded within 28 days of that change. You need to register your interests so that the general public, authority staff and fellow councillors, know which of your interests might give rise to a conflict of interest. This is a public document and aims to ensure that decision-making is seen to be open and honest. This helps to preserve public confidence in the integrity of local government. You need to register a range of connections which includes –

- membership of local authority bodies - membership of any body exercising functions of a public nature, eg political party or trade union - your job or business - any contracts between the Authority and yourself - any land or property in the Authority's area

If the form is not clear to you, please consult the Monitoring Officer or appropriate Town/Parish Clerk.

APPENDIX 2

Interests Not on Your Register

You have a personal interest in a matter if that matter affects the well-being or financial position of you, members of your family, or people with whom you have a close association, more than it would affect most people in the area affect. ("Well-being" can be described as a condition that could affect the quality of life of you or those in your family or with whom you have a close association.)

A member of your family has a wide meaning and a person with "close association" is someone you have contact with who is more than an acquaintance.

APPENDIX 3

Prejudicial Interests

Your personal interest will also be a prejudicial interest if ALL of the following conditions are met:

It is not in one of the exempt categories, namely -

- if you hold a tenancy or lease with the Authority as long as it is not relevant to your particular lease or tenancy - setting Council Tax or a precept - any ceremonial honour - statutory sick pay, if you are in receipt of such - school meals or transport unless specific to your child's school or

CODE OF CONDUCT

Whenever you are acting in your capacity as a Councillor:

1. You must not use, or try to use, your position improperly to obtain an advantage or disadvantage for yourself or any other person or body.
2. You must not use your Council's resources improperly for political purposes or any other purposes forbidden by your Council.
3. You must not do anything that compromises, or is likely to compromise, the impartiality of those who work for the Council.
4. You must not bully anyone.
(Bullying is offensive, intimidating, malicious, insulting or humiliating behaviour that is directed at someone over whom you have some actual or potential influence).
5. You must not intimidate, or try to intimidate, anyone who has complained about you or who may be involved with a complaint about you.
6. You must not disclose information that you know, or ought to know, is confidential, without authority or a legitimate reason.
7. You must not prevent, or try to prevent, anyone from obtaining information to which they are entitled by law.
8. You must not do anything that may cause your Council to breach any of the Equality laws that prohibit discrimination on grounds such as age, sex, race, disability, religion/belief, sexual orientation or pregnancy.

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