



Association of
Democratic Services
Officers

ETHICS AND STANDARDS BRIEFING

– JANUARY 2023

ETHICS AND STANDARDS

The Localism Act 2011 made fundamental changes to the system for regulating standards of conduct for elected and co-opted members. It abolished the national code of conduct and allowed councils to adopt their own code. It also abolished the national Standards Board and with it the requirement for authorities to have Standards Committees.

DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT

Authorities remain under a statutory duty to promote and maintain high standards of conduct for their elected and co-opted members (Localism Act s27 (1)). In discharging this duty, a relevant authority must, in particular, 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 (s27 (2)).

NEW COUNCILLORS' CODE OF CONDUCT

The Local Government Association published the new model Councillors' Code of Conduct in December 2020 <https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>. It is a template for Councils to adopt as a whole and/or with local amendments. It sets out general principles of conduct expected of members and their specific obligations in relation to standards of conduct. These obligations are the minimum standards of conduct required of councillors. The LGA will conduct an annual review to ensure the code continues to be fit for purpose.

ADSO, Lawyers in Local Government (LLG) and the Society of Local Council Clerks (SLCC) amongst others worked with the LGA on the new Code.

The Code applies to members when they are acting in their capacity as a councillor which may include when:

- they misuse their position as a councillor
- their actions would give the impression to a reasonable member of the public with knowledge of all the facts that they are acting as a councillor;

The Code also applies to all forms of communication and interaction, including electronic and social media.

Following the publication of the Code, the LGA produced detailed guidance. This can be found here <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>.

THE REGISTER OF MEMBERS' INTERESTS

The new Code says that within 28 days of becoming a member or upon re-election or re-appointment to office, members must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012" (see below). They should also register details of their other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)** (see below). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for parish councils which has to be open for inspection at the Council offices and on the Council's website.

INTERESTS WITHIN THE NEW COUNCILLORS' CODE OF CONDUCT

The new Code sets out three types of members interests, namely:

- Disclosable Pecuniary Interests (DPIs)
- Other Registerable interests
- Non-Registerable interests

There is also differentiation between an interest that "directly relates" to the member, or something that "affects" them

Something relates to a member's interest if it is directly about it. For example the matter being discussed is an application about a particular property in which a member or somebody associated with them has a financial interest.

'Affects' in this context means the matter is not directly about that interest but nevertheless the matter at hand has clear implications for the interest – for example, it is a neighbouring property. An interest can of course affect a member, their family or close associates positively and negatively. So if a member or their family/close associate have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

DISCLOSABLE PECUNIARY INTERESTS

Before the end of 28 days beginning with the day a person becomes a member or co-opted member, he/she must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are

associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).

A 'disclosable pecuniary interest' is an interest of the member or his/her partner (which means spouse or civil partner, a person with whom he/she is living as husband or wife, or a person with whom he/she is living as a civil partner) within the descriptions set out in **Table 1** below.

Where a matter arises at a meeting which directly relates to a members' DPI as set out in **Table 1**, they must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation. If it is a 'sensitive interest', they do not have to disclose the nature of the interest, just that they have an interest. Dispensation may be granted in limited circumstances, to enable them to participate and vote on a matter in which they have a DPI.

Where a member has a DPI on a matter to be considered or is being considered by them as a Cabinet member in exercise of their executive function, they must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

OTHER REGISTERABLE INTERESTS

Where a matter arises at a meeting which ***directly relates*** to one of a members' Other Registerable Interests (as set out in **Table 2**), they must disclose the interest. They may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation. If it is a 'sensitive interest', they do not have to disclose the nature of the interest.

NON REGISTERABLE INTERESTS

Where a matter arises at a meeting which ***directly relates*** to a member's financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in **Table 1**) or a financial interest or well-being of a relative or close associate, they must disclose the interest. They may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation. If it is a 'sensitive interest', they do not have to disclose the nature of the interest.

Where a matter arises at a meeting which ***affects*** –

- a. their own financial interest or well-being;
- b. a financial interest or well-being of a friend, relative, close associate; or
- c. a body included in those requiring disclosure under Disclosable Pecuniary Interests as set out in **Table 1**

the member must disclose the interest. In order to determine whether they can remain in the meeting after disclosing the interest the following test should be applied

Where a matter **affects** their financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect their view of the wider public interest

They may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise they must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation. If it is a 'sensitive interest', they do not have to disclose the nature of the interest.

Where a member has a personal interest in any business of their authority and they have made an executive decision in relation to that business, they must make sure that any written statement of that decision records the existence and nature of their interest.

WHEN CAN A MEMBER APPLY FOR A DISPENSATION?

The rules allow an authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the council or authority considers that:

- a) without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,
- b) without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote,
- c) the granting of the dispensation is in the interests of people living in the council's or authority's area,
- d) without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- e) it is otherwise appropriate to grant a dispensation.

A member will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which affects the generality of the public in the area of the council, rather than the member as an individual.

SENSITIVE INTERESTS

Where a member is concerned that disclosure of the details of an interest at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest". This would allow the member to disclose only that he/she has a pecuniary interest, rather than the nature of the interest.

CRIMINAL OFFENCE

It is a criminal offence if, without a reasonable excuse, a member fails to tell the Monitoring Officer about his/her disclosable pecuniary interests, either for inclusion on the register if he or she is a newly elected, co-opted or appointed member, or to update the register if he/she is re-elected or re-appointed, or when he/she becomes aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where the member is present, or
- on which he or she is acting alone.

It is also a criminal offence for a member to knowingly or recklessly provide false or misleading information, or to participate in the business of the authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which a member has a disclosable pecuniary interest.

GIFTS & HOSPITALITY

The new Code sets a £50 threshold for registration rather than the previous £25 limit.

COMMITTEE ON STANDARDS IN PUBLIC LIFE – REPORT – JANUARY 2019

The Committee on Standards in Public Life (CSPL) reported in January 2019. It's recommendations were wide ranging and some (if implemented) would require changes to primary legislation – for example increased sanctions, or the abolition of the DPI criminal offence. Others constitute best practice and can be implemented by local authorities without any legislative changes. The Government has not yet responded to the recommendations.

CSPL looked at four specific areas of operation of the system – the Code of Conduct and arrangements for registration and declaration of interests; the available sanctions; the role of the Independent Person (IP), Monitoring Officers and standards committees; and support for parishes. In addition it looked more widely at how authorities could better promote high standards of conduct.

CSPL found there was no appetite to return to a centrally-regulated system as local arrangements on the whole were most effective at handling the majority of cases and that on the whole standards were high. However there were issues with a small

handful of serious or persistent offenders and with governance arrangements in some parish councils. There also needed to be a more consistent approach taken to standards and Monitoring Officers and Councils needed some more effective tools to allow them to handle those serious and persistent cases.

Recommendations

Code of Conduct

1. There should not be a compulsory national Code but there should be a new model rules-based Code produced by the LGA which councils should generally follow but add local variations to if needed
2. There should be the same Code across a geographical area with parishes being under a requirement to adopt the principal authority code
3. There needed to be a more comprehensive system for registering and declaring interests which goes wider than the current statutory minimum
4. The criminal offence for non-registration and non-declaration of Disclosable Pecuniary Interests should be abolished
5. There should be a rebuttable presumption that any public action by a councillor is within the scope of the Code
6. The Code should also cover circumstances where a member is purporting to act as a member

Sanctions

1. Councils should have the power to suspend members for up to six months without allowances
2. The IP would need to agree that there had been a breach of the Code and that a suspension was a proportionate outcome
3. A suspended member could appeal to the Local Government Ombudsman against the outcome of the case
4. The Government should make clear what other administrative sanctions are available to Councils

The roles of the Independent Person, Monitoring Officer and Standards Committee

1. The IP should be given a legal indemnity by Councils if they are to have a role in agreeing to suspension of members
2. IPs should be appointed for a two-year term, renewable once, to ensure they are seen to be independent
3. Any views expressed by an IP should be published as part of a decision notice
4. Statutory protection for Monitoring Officers should be extended to include any disciplinary action not just dismissal
5. Councils should have a standards committee
6. Standards committees should be able to co-opt independent members and parish representatives with voting rights if they so choose
- 7.

Parish Councils

1. Sanctions against a parish council should be imposed by the principal authority rather than referred back to the parish council
2. Parish clerks should hold a suitable qualification
3. There should be greater recognition of the role of the Monitoring Officer in supporting parishes and they should be resourced accordingly

CSPL also made some wider recommendations about how councils should seek to put high standards at the heart of the organisation. It believes, for example, that political parties should make member training on standards a requirement of their model group rules, and that there needs to be a much greater recognition in all authorities of the importance of the role of the Monitoring Officer as part of corporate management arrangements, and standards should be seen as the responsibility of all not just the Monitoring Officer.

COMMITTEE ON STANDARDS IN PUBLIC LIFE – BEST PRACTICE UPDATE JANUARY 2021

This update was a health check of the current framework established by the Localism Act 2011. The 2019 report provided assurance that the arrangements in place in local authorities are promoting and maintaining standards expected by the public and that the majority of local councillors do maintain high ethical standards.

The Committee recommended though that some improvements were required, in particular, the need for maximum independence in local complaints processes and the need for greater sanctions, where appropriate, in the rare cases of significant or repeated breaches of the code of conduct.

Reviewing progress against best practice recommendations

The Committee has reviewed actions since the 2019 report, following up progress against their 15 best practice recommendations. The responses received from local authorities to date have been positive with most local authorities confirming that they have already implemented or are taking steps to implement the best practice recommendations.

CSPL is aware that the COVID-19 pandemic has involved significant additional work for those in local government.

Government Response

The Government responded in March 2022 - [Local government ethical standards: government response to the Committee on Standards in Public Life report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/local-government-ethical-standards-gov-uk)

In response, Lord Evans (the Committee's chair) said:

“While we note the government’s commitment to further work to support local government, the Committee is disappointed that many of its careful recommendations have not been accepted. It was clear from our evidence that the sector backed our call to strengthen the arrangements in place to support high ethical standards, whilst respecting the benefits of a localised approach.

We are pleased that many local authorities have already reviewed their approach as a result of this work and are adopting the best practice points from the report. Across all tiers of local government, decisions are taken about a wide range of local services using public funds, so it is important that there are robust governance arrangements that command public confidence.”

Table 1

Interest	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p> <p>The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.</p>
Contracts	<p>Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
Licences	Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to your knowledge) –</p> <p>(a) the landlord is your council or authority; and</p> <p>(b) the tenant is a body in which you, or your spouse or your</p>

	civil partner, has a beneficial interest.
Securities	<p>Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -</p> <p>(a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and</p> <p>(b) either -</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

Table 2

Other Registerable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

a) any body of which you are in general control or management and to which you are nominated or appointed by your authority

b) any body

(i) exercising functions of a public nature

(ii) any body directed to charitable purposes or

(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)