

DCLG GUIDANCE – OPENNESS AND TRANSPARENCY ON PERSONAL INTERESTS**REPORT OF THE HEAD OF LAW AND GOVERNANCE****1 Introduction**

- 1.1 The purpose of this report is to advise members of Government guidance on openness and transparency on personal interests that has been updated and reissued by the Department of Communities and Local Government (DCLG) in September of this year, to include specific provision regarding trade union membership. A copy of the guidance, together with the covering letter from DCLG to authorities and also the amended “illustrative text” for a Code of Conduct, is shown in the Appendix to this report.

2 Guidance Document

- 2.1 The press release that accompanied the guidance stated that *“Government guidance on openness and transparency of a councillor’s personal interests has been revised to include specifically registering union memberships. In addition a council’s own code of conduct, guided by the 7 principles of public life, should now specify a requirement to register personal trade union interests.”* In fact, although the DCLG “illustrative text” has been amended, there is nothing in the guidance instructing authorities to change their code of conduct.
- 2.2 Members will see a number of explicit references to trade union membership in the guidance. For example, in the section under the heading *“What personal interests should be entered in my council’s or authority’s register of members’ interests?”* it is now stated that *“These interests will necessarily include your membership of any Trade Union.”* In the section under *“What must I do about registering my personal interests?”* it is stated that *“All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority’s code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union.”*
- 2.3 Unlike the previous legislation, the sections of the Localism Act 2011 (the 2011 Act) that deal with the standards regime, do not empower the Secretary of State to issue statutory guidance and so these pronouncements do not have the force of law. The legal requirements regarding registration and disclosure of interests are set out in the 2011 Act and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (the Regulations). The categories of disclosable pecuniary interests (DPIs) that members must place

on the register and declare at meetings are listed in the regulations. They include *“Sponsorship...any payment or provision of any other financial benefit...in respect of any expenses incurred by [a member] in carrying out duties as a member, or towards [the member’s] election expenses.”* The Regulations expressly state that *“This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992.”* They do not contain any reference to union membership.

- 2.4 The Government guidance in respect of trade union membership does not therefore reflect the legislation. The guidance refers to a concept of personal interest which is only relevant if the authority’s code specifically identifies such interests as being subject to requirements regarding registration and disclosure. While authorities are required to include DPIs on their registers of interests, other than this, it is up to them which interests they include.
- 2.5 Although the Council’s Code of Conduct does not require registration of trade union membership, whenever a member attends a meeting at which the matter under consideration concerns a body of which they are a member, whether that body is a trade union, community association, charity or other body, they need to ask themselves whether any issue of bias or predetermination could arise by virtue of the subject matter under discussion. If it does, the member should make their interest known (even if it does not amount to a DPI) and leave the meeting room. Advice to this effect has been provided to members and this is the approach that is taken by them.

3 Options

- 3.1 The Committee could recommend Council to consider amending the Code of Conduct to require registration of trade union membership. However, that does beg the question as to why trade union membership should be singled out. If a provision was to be included regarding this, what about membership of other bodies such as community organisations, charities and so on?
- 3.2 Alternatively, the Code could remain in its current form and members will continue to give consideration to whether any issue of bias or predetermination may arise in respect of any matter under consideration and if so, declare that interest and leave the meeting room.

The requirement to leave the room is of course subject to the ability of members, in specific circumstances, to address a meeting. For example, in the case of planning applications, where a member of the relevant development control subcommittee has predetermined an application to which they object, provided they do not also have a DPI in the matter, they may address the subcommittee, along with any others who wish to speak on the

application and then leave the meeting room while the subcommittee deliberates.

Recommendations

- 4.1 That the Committee notes the guidance document issued by DCLG on openness and transparency on personal interests.
- 4.2 That no amendment to the Code of Conduct be proposed but that members continue to be advised to declare any interest in a matter (whether or not that interest also amounts to a DPI) that may give rise to an issue of bias or predetermination at any meeting attended by them and where appropriate, leave the room while the matter is under consideration.

Background Papers

DCLG guidance – Openness and Transparency on Personal Interests