

**Update on the new Standards Regime and Disclosure and Registration of Interests**

**Report of the Head of Law & Governance**

**1 Background**

- 1.1 As Members are aware, under the new Standards Regime introduced by the Localism Act 2011 (the Act), a new Register of Members' Interests has been created. Members are required to register 'Disclosable Pecuniary Interests' (DPIs) which are defined by regulation. It had been hoped that the Department for Communities and Local Government (DCLG) would issue guidance regarding both the individual categories of interest and also the circumstances in which a Member may not take part in a meeting, due to them having a DPI in a matter under discussion.
- 1.2 Under the previous regime, there were clear "tests" to which members could have regard when considering whether it was appropriate for them to participate in a meeting despite having an interest relating to the matter under discussion e.g. whether the matter related to or was likely to affect the member or a body on their register of interests, whether it might affect the well being or financial position of the member, a close associate etc to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision. In the case of prejudicial interests, the tests related to whether the interest concerned financial or regulatory matters and also whether a member of the public with knowledge of the facts would reasonably regard the interest as so significant that it was likely to prejudice the member's judgement of the public interest. Whilst guidance has been issued by DCLG in relation to the standards regime, unfortunately, it does not clearly address these matters. A copy of the guidance is shown as an Appendix to this report.

**2. Register of Disclosable Pecuniary Interests (DPIs).**

- 2.1 In accordance with the Act, the Council and Hetton Town Council have adopted a Code of Conduct and have registers of members' interests. To date, both Councils have decided only to require the registration of those interests which amount to DPIs and not to include any other additional personal interests.
- 2.2 Section 30 (1) of the Act provides that a member must, before the end of 28 days beginning with the day on which they become a member, notify the monitoring officer of any DPIs which they have at that time. (There is also a requirement elsewhere in the Act to register a DPI if a member attends a meeting and discovers that they have a DPI in a matter being considered at that meeting. In such circumstances, under

the Council's Code of Conduct they must declare the interest and then, in accordance with both the Code and the Act, notify it to the Monitoring Officer if they have not already done so).

- 2.3 A number of legal commentators have expressed the view that the duty in section 30 (1) (and criminal sanction for non-compliance) only applies to councillors after they are next elected and therefore the application of the section will be piecemeal over a four year period.
- 2.4 DCLG expresses the view that all sitting Councillors need to register their interests. The Department refers to the seven principles of public life, one of which is the principle of honesty i.e. that holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. It states that

*“Any suggestion that you should tell the Monitoring Officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty, with which you must comply.”*

Subject to the provision referred to in paragraph 2.2 above, it is debateable whether or not this view is correct. Nevertheless, whatever the correct interpretation of the legislation, the Council and Hetton Town Council have in fact requested all members to notify their interests, regardless of their date of election.

- 2.5 With regard to the information that must be included in the Register, the DCLG guidance states that a spouse's or civil partner's name does not need to appear on the Register of Interests, as their interest is the interest of the member concerned. Unfortunately, this guidance was issued after interest forms, which provided for separate identification of the interests of a spouse etc, had been distributed to members. It is understood that this was also the position for a number of other authorities and while it appears that some are continuing to show a spouse's interests as distinct from those of a member, for the avoidance of doubt, the information displayed in the publicly available register for this Council's members has been redacted so as not to separately identify such interests. For the future, the forms will be amended so that members can simply record the totality of their interests and those of their spouse or partner.

### **3. Members having DPIs in an item of business at a meeting**

- 3.1 As stated above, the guidance document does not address the issue of when a member should consider that they have a DPI in a matter being considered at a meeting and should therefore not participate. In a letter issued by DCLG in response to a number of issues raised with them, the Department states

*“The Localism Act 2011 regime is wholly different in its concept of interests from the previous Standards Board regime. The 2011 Act Regulations are primarily about specifying descriptions of interests that are to be entered into the register entirely independently of whatever council business a member may or may not subsequently be involved with. In contrast to the previous regime, the principal focus of the 2011 Act regime is the pecuniary interests a member has as a result of their own financial affairs. When these interests fall within the description specified in the Regulations, they become a member’s disclosable pecuniary interests – to be entered into the register- and are and remain so whatever business comes before the council.*

*With this approach the prohibitions about participating and voting are engaged when a member’s disclosable pecuniary interest, as entered or capable of being entered into the register without any reference to items of council business, nevertheless is related to an item of business concerned, such that that disclosable pecuniary interest is an interest in the matter under consideration.”*

3.2 It is not considered that this response adds any clarity to the position. It is therefore recommended that in the absence of any further guidance, members continue to apply the test of considering whether a reasonable member of the public, knowing the relevant facts, would consider that the member’s interest is such that it could prejudice their judgement of the public interest.

3.3 Members will see that the guidance also provides that where a Member has a DPI relating to any business being considered at a meeting, the prohibition on participation applies to any form of participation, including speaking as a member of the public. There is a contrary view taken by some authorities who have continued, for example, to allow a member who has a DPI to address a committee on a matter where members of the public have such a right and then leave the room and not take part in the debate or vote.

However, Sunderland Council and Hetton Town Council have applied the approach reflect in the DCLG guidance so, for example, it is no longer possible for a member who has a DPI in a planning matter, to address the Development Control Sub-Committee, as was previously permitted under the old Code of Conduct.

3.4 There is clearly a division of opinion on this area and it is recommended that unless there is further clarity either by way of case law or due to a change in legislation, the Council continues to apply the principle that any Member with a DPI should not participate in a meeting in any capacity.

## **4 Recommendations**

4.1 Members are requested to note this report.

## Background Papers

Localism Act 2011

Openness and Transparency on Personal Interests – Guidance issued by  
DCLG