

## STANDARDS COMMITTEE

### AGENDA

Meeting to be held in the Civic Centre (Committee Room No. 1) on  
Monday, 18<sup>th</sup> February, 2013 at 4.00 p.m.

Please note the change of room.

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1.	<b>Apologies for Absence</b>	
2.	<b>Declarations of Interest (if any)</b>	
3.	<b>Procedures for Dealing with Code of Conduct Complaints</b>	1
	Report of the Head of Law and Governance (copy herewith).	
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	Joint report of the Executive Director of Commercial and Corporate Services and Head of Law and Governance (copy herewith).	
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Information contained in this agenda can be made available in other languages and formats on request.

E. Waugh,  
Head of Law and Governance.

Civic Centre,  
SUNDERLAND.

7<sup>th</sup> February, 2013

**Report to Standards Committee****18 February 2013****Procedures for Dealing with Code of Conduct Complaints****Report of the Head of Law and Governance****1 Purpose of the Report**

- 1.1 To consider proposals for new written procedures to deal with complaints alleging breaches of the Members' Code of Conduct.

**2 Background**

- 2.1 As Members will be aware, under the Localism Act 2011 a new statutory framework for dealing with standards of conduct of Members was put in place with effect from 1 July 2012. At its meeting on 20 June 2012, the Council agreed a new Code of Conduct and also agreed arrangements for dealing with complaints. Those arrangements are set out in Annex 1 to this report.
- 2.2 Council also resolved that the Monitoring Officer should in due course prepare a written version of the agreed arrangements, to include a template form of complaint and procedures to be followed for any investigation or local determination of a complaint and that the Standards Committee be given delegated power to adopt and amend those written procedures as it seemed appropriate.

**3 Proposed Procedures for dealing with Complaints**

- 3.1 The proposed procedures are set out in Annex 2 of this report for the Committee's consideration. References in this report to the "subject member" are to the member about whom a complaint has been made.
- 3.2 A significant change from the former position is that the previous legislation required that all complaints were referred to a Sub Committee of the Standards Committee for assessment, with the subject member given no detail of the complaint against them, beyond the name of the complainant and the paragraph of the Code they were alleged to have breached. The new legislation has repealed those provisions and allows Authorities to put in place their own processes. This means that less cumbersome procedures than those prescribed in the past can be adopted and in particular, the Monitoring Officer may now provide the subject member with more information about the complaint and obtain further information from both the subject member and the complainant, before deciding whether or not to refer the matter for formal investigation.
- 3.3 The Council has agreed to the principle of the initial screening of complaints being delegated to the Monitoring Officer, subject to consultation with the Independent Persons. The Monitoring Officer does however have the ability to refer complaints to the Standards Committee for consideration, where it is considered inappropriate for her to take the decision herself.

- 3.4 Complaints will still be logged and the Monitoring Officer will report to the Standards Committee on a regular basis on complaints received to advise how they have been dealt with.
- 3.5 A further improvement from the previous regime is that there is now increased scope for informal resolution of complaints. It is also proposed where a subject member makes a reasonable offer of resolution during the assessment stage of the process, if the complainant unreasonably refuses such an offer, the Monitoring Officer or Standards Committee as appropriate may take this into account in deciding whether or not the matter should be investigated.

#### **4 Appeals**

- 4.1 There is no specific legal requirement in the new legislation to have a right of appeal for members against a finding that they have breached the Code of Conduct or against a sanction imposed. Members aggrieved by such findings would have the ability to take the matter to judicial review.
- 4.2 Council has however agreed as part of its arrangements that if a subject member is aggrieved by a decision of the Standards Committee that they have failed to comply with the Code, or by a sanction imposed, they should have a right to request a review by an Independent Person from another Local Authority and if their views are different to the original finding or sanction, the Standards Committee should review its original decision, taking those views into account.

#### **5 Media Protocol**

- 5.1 As well as procedures for dealing with complaints, a revised protocol for dealing with the media is also attached for Members' consideration at Annex 3 of this report.

#### **6 Recommendations**

- 6.1 It is recommended that Members consider the new procedures and the media protocol set out in this report and subject to any revision they require to be made, agree to adopt them as the written arrangements for dealing with complaints regarding alleged breaches of the Members' Code of Conduct.

#### **Background Papers**

Report to Council on new Standards Regime – 20 June 2012

**Outline of Proposed Arrangements Agreed by Council 20 June 2012**

- (a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- (b) That the Monitoring Officer be given delegated power, after consultation with the Independent Person(s), to determine whether a complaint merits formal investigation and to arrange such investigation. She be instructed to seek resolution of complaints without formal investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the Standards Committee where she feels that it is inappropriate for her to take the decision, and to report regularly to Standards Committee on the discharge of this function;
- (c) That in deciding whether a complaint should be investigated, the Monitoring Officer or Standards Committee as appropriate, take into account the criteria at Appendix 4 and that the Standards Committee be given delegated power to amend those criteria from time to time as it thinks appropriate.
- (d) Where an investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be authorised to close the matter (unless she considers it appropriate after consulting the Independent Person(s) to refer the findings to the Standards Committee to decide if a hearing is nevertheless called for), providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person(s), and reporting the findings to the Standards Committee for information;
- (e) Where an investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to the Standards Committee. Where such local resolution is not appropriate or not possible, she is to report the investigation findings to the Standards Committee for local hearing;
- (f) That Council delegate to the Standards Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
  - Issuing a formal censure by the Committee;
  - Recommending to full Council, or to Hetton Town Council, the issue of a formal censure by the Council or by the Town Council;
  - Referral of its findings to full Council, or to Hetton Town Council, for information;
  - Publication of its findings by such means as the Committee thinks fit;
  - Recommending to the Council, or to Hetton Town Council, that the member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group if applicable);

- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - Recommending to the Council, or to Hetton Town Council, that the member be removed from all outside appointments to which she/he has been appointed or nominated by the Council or by Hetton Town Council;
  - Instructing the Monitoring Officer to, or recommending that Hetton Town Council, offer training to the member; or
  - Recommending to the Council, or to Hetton Town Council, that it exclude the member from the Council's offices or other premises or facilities, to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member;
  - Such other recommendations as the Committee may think appropriate
- (g) That provision be included for a member who is aggrieved by a finding of the Standards Committee that he or she has failed to comply with the Code of Conduct and / or by a sanction imposed by the Committee, to have a right to request a review by an Independent Person of another local authority whose views, if critical of the original finding or sanction imposed, will result in the Standards Committee being required to reconsider its original decision. The Monitoring Officer be authorised to arrange with one of the Council's neighbouring authorities that one of its Independent Persons be made available for this purpose.
- (h) That the Monitoring Officer in due course prepare a written version of the agreed Arrangements for publication, to include a template Form of Complaint and procedures to be followed for any investigation or local determination of a complaint and that the new Standards Committee be given delegated power to adopt and amend those procedures from time to time as it thinks appropriate.

**Code of Conduct for Members**

**Arrangements for Dealing with Complaints**

**Written Procedures**

# **PROCEDURES FOR DEALING WITH ALLEGATIONS OF BREACHES OF THE CODE OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS**

## **ADVICE FOR COMPLAINANTS**

### **1 Context**

- 1.1 These arrangements explain how you may make a complaint that an elected or co-opted member of Sunderland City Council (the Council) or Hetton Town Council (the Town Council) has failed to comply with the relevant authority's Code of Conduct (the Code). They also set out how the Council will deal with your complaint.
- 1.2 The Council is required to have such arrangements in place by section 28 of the Localism Act 2011. It is responsible for dealing with any complaint against a Town Councillor, as well as complaints about its own members.
- 1.3 As part of the arrangements, the Council must appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage in the process. The Independent Person's views may also be sought by the member or co-opted member against whom an allegation has been made.
- 1.4 The Council has appointed two Independent Persons. Further information regarding this post is set out in paragraph 13.
- 1.5 In these arrangements, reference is made to the Monitoring Officer. The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.
- 1.6 References in these procedures to the Monitoring Officer include, where relevant, his/her Deputy or other officer authorised to act on his/her behalf.

### **2 The Code of Conduct**

- 2.1 The current Code of Conduct for members, which has been adopted by the Council, came into effect on 1<sup>st</sup> July 2012 and is attached as Appendix One to these arrangements. It is also available for inspection on the Council's website and on request from the Council's Customer Services Centre.
- 2.2 Hetton Town Council is also required to adopt a Code of Conduct. If you wish to inspect that Council's Code, you should inspect any website operated by the Town Council or contact the clerk to the Town Council.



### **3 Making a complaint**

- 3.1 If you wish to make a complaint, please write or email to –  
The Monitoring Officer  
Law & Governance Services  
PO Box 100  
Civic Centre  
Sunderland  
SR2 7DN

Or –

City.Solicitor@sunderland.gov.uk

If a disability prevents you from making your complaint in writing, you may contact the Complaints and Feedback Team Manager on 0191-5611065 for assistance.

- 3.2 Complaints must specify details of the alleged breach of the Code and provide details of any evidence available to support the complaint. Complaints should be made in writing or by e-mail to the Monitoring Officer as soon as possible.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which is attached as Appendix Two and which can be downloaded from the Council's website. The form is also available from the Complaints and Feedback Team Manager.
- 3.4 You should set out exactly what the member you are complaining about said or did that caused you to complain. You should be as detailed as possible and substantiate your claim where you can. Although you are not required to prove your complaint at this stage of the process, you do have to demonstrate reasonable grounds for believing that the member complained about has breached the Code of Conduct.
- 3.5 Please provide us with your name and a contact address and/or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. You should note that the Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 As a matter of fairness and natural justice, we believe that the member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold your identity if he/she is satisfied that you have reasonable grounds for believing that you or any witness relevant to the complaint may be at risk of physical harm if your identity is disclosed, or where there are medical risks (supported by medical evidence) associated with your identity being disclosed. The Monitoring Officer may also withhold details of your complaint from the member at this initial stage, if he/she considers that to release details may prejudice any subsequent investigation.

- 3.7 If you wish to request that your name remains confidential and/or that details of your complaint are withheld from the member concerned, please indicate this in the space provided on the complaint form and give reasons.
- 3.8 Any request for confidentiality will be considered by the Monitoring Officer at the initial assessment stage when your complaint is received. (If the Monitoring Officer decides that the assessment of your complaint should be undertaken by the Standards Committee, the Committee will consider your request).
- 3.9 If the Monitoring Officer (or Standards Committee, as appropriate) decides to refuse your request for confidentiality, he/she will offer you the option to withdraw the complaint, rather than proceed with your identity being disclosed.
- 3.10 Where very serious allegations are made, the Monitoring Officer may decide to investigate the complaint and if he/she considers it reasonably necessary, notify the member of your identity, despite your request for confidentiality.
- 3.11 In any event, even if the Monitoring Officer (or Standards Committee) decides to withhold your identity and/or details of your complaint from the member at this initial stage, if the matter is referred for investigation, at some point it is likely that it will be necessary to provide this information to the member concerned, to enable them to respond to the complaint and for the investigation to be completed. The Monitoring Officer will determine whether and at what point the member will be advised of your complaint and your identity.

(These procedures will be adjusted as appropriate, in order to accommodate any decision on confidentiality or to withhold details of a complaint).

#### **4 Processing a Complaint**

- 4.1 The Monitoring Officer will review your complaint and, after consultation with the Independent Person(s), take a decision as to whether it merits formal investigation.
- 4.2 The Monitoring Officer will notify the member concerned of your complaint and (subject to agreeing any request for confidentiality and/or withholding of details of the complaint) give him/her your name and will invite him/her to make any comments which they wish to be taken into account when making the decision as to whether to investigate the matter. The member will be requested to provide their comments within 10 working days of receipt of notification of the complaint. The Monitoring Officer has discretion to extend this period.
- 4.3 The Monitoring Officer will also provide the member with the contact details of the Independent Person(s). The member is entitled to consult the Independent Person(s) at any stage of the process.

- 4.4 When deciding whether or not to investigate the complaint, consideration will be given as to whether or not the allegation, if proved, could amount to a breach of the Code of Conduct. If the conduct complained about does not amount to a breach of the Code, it will not be investigated. Regard will also be had to the Council's adopted assessment criteria (attached at Appendix Three) and any other relevant factors. You will be advised of the Monitoring Officer's decision and the reasons for that decision.
- 4.5 Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may also request further information from the member against whom your complaint is directed or from any other person or organisation.
- 4.6 Where your complaint relates to a Town Councillor, the Monitoring Officer may also inform the Clerk of the Town Council of your complaint and seek his/her views before deciding whether the complaint merits formal investigation.
- 4.7 In some cases, the Monitoring Officer may not consider it appropriate for him/her to make the decision on whether your complaint should be investigated. In such cases, he/she will refer the matter to the Standards Committee.
- 4.8 You will not be able to address the Monitoring Officer or the Committee and therefore it is important that you set out your complaint in writing clearly and provide at the outset all the information you wish the Monitoring Officer or Standards Committee, as appropriate, to consider, including, where possible, any documents or other material that you wish to be taken into account.

## **5 Informal Resolution**

- 5.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the member or the Council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 5.2 Even if a complaint is referred for investigation, the Monitoring Officer may seek an informal resolution at any point in the process.
- 5.3 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer may report this to the Police or other regulatory agencies.

## **6 Review**

- 6.1 If the Monitoring Officer or Standards Committee decides not to refer your complaint for investigation, you have no right to have this decision reviewed.

## **7 Reports on Complaints**

- 7.1 The Monitoring Officer will submit reports to the Standards Committee on a regular basis, setting out on an anonymous basis, information regarding complaints received, and whether or not they have been referred for investigation. Where an investigation concludes that no breach has occurred and that is accepted by the Monitoring Officer, the Standards Committee will also be notified of that fact (see Procedure for Investigation of Complaints).

## **8 How is the investigation conducted?**

- 8.1 The procedure for investigating a complaint is set out in Appendix Four.
- 8.2 Where complaints are received from more than one complainant which relate to the same or similar allegations, the Monitoring Officer has discretion to consolidate the complaints so that they are dealt with as part of one investigation and if appropriate, are heard at one hearing.

## **9 The Hearing**

- 9.1 The procedure for hearings is set out in Appendix Five.

## **10 What happens at the end of the hearing?**

- 10.1 At the end of the hearing, the Chair will state the decision of the Standards Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.
- 10.2 As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Committee, and send a copy to you, the member, the Independent Person(s) (and to the Town Council if appropriate). He/she will also make that decision notice available for public inspection and will publicise the decision in such further manner (if any) as the Committee may direct.

## **11 What action can the Standards Committee take where a member has failed to comply with the Code of Conduct?**

- 11.1 The Council has delegated to the Standards Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee may –

- Issue a formal censure by the Committee;
- Recommend to full Council, or to Hetton Town Council the issue of a formal censure by the Council or Town Council;
- Refer its findings to full Council, or to Hetton Town Council, for information;
- Publish its findings by such means as the Committee thinks fit;
- Recommend to the Council, or to Hetton Town Council, that the member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group if applicable);
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to the Council, or to Hetton Town, that the member be removed from all outside appointments to which she / he has been appointed or nominated by the Council or by Hetton Town Council;
- Instruct the Monitoring Officer to, or recommend that Hetton Town Council, offer training to the member; or
- Recommend to the Council, or to Hetton Town Council, that it excludes the member from the Council's offices or other premises or facilities, to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member;
- Such other recommendations as the Committee may think appropriate.

11.2 The Standards Committee has no power to suspend or disqualify a member or to withdraw or suspend members' basic or special responsibility allowances, or to restrict a member's access to Council resources so that the member is unable to perform his / her essential role as a councillor.

## **12 What is the Standards Committee?**

12.1 The Standards Committee is comprised of eight members of the Council together with two non-voting co-optees nominated by Hetton Town Council.

12.2 The Committee seeks the views of the Independent Person(s) and takes these into consideration before the Committee takes any decision on whether a member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code.

## **13 Who are the Independent Person(s)?**

The Independent Person(s) is a person who has applied for the post following advertisement of the vacancy. He/she is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 13.1 is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 13.2 is or has been within the past 5 years, a member, co-opted member or officer of a Town Council within the authority's area, or
- 13.3 is a relative, or close friend, of a person within paragraph 13.1 or 13.2 above. For this purpose, "relative" means –
  - 13.3.1 spouse or civil partner;
  - 13.3.2 living with the other person as husband and wife or as if they were civil partners;
  - 13.3.3 grandparent of the other person;
  - 13.3.4 a lineal descendent of a grandparent of the other person;
  - 13.3.5 a parent, sibling or child of a person within paragraphs 13.3.1 or 13.3.2;
  - 13.3.6 a spouse or civil partner of a person within paragraphs 13.3.3, 13.3.4 or 13.3.5; or
  - 13.3.7 living with a person within paragraphs 13.3.3, 13.3.4 or 13.3.5 as husband and wife or as if they were civil partners.

## **14 Revision of these arrangements**

- 14.1 The Standards Committee has delegated authority to amend these procedures from time to time as it thinks appropriate.

## **15 Appeals**

- 15.1 There is no right of appeal for you as a complainant against a decision of the Monitoring Officer or of the Standards Committee. If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.
- 15.2 If a member is aggrieved by a finding of the Standards Committee that he/she has failed to comply with the Code of Conduct and / or by a sanction imposed by the Committee, he/she may request a review by an Independent Person of another Local Authority whose views, if critical of the original finding or sanction imposed, will result in the Standards Committee being required to reconsider its original decision.
- 15.3 The member must request a review, with their detailed reasons for seeking a review, within 5 working days of the publication of the decision notice, otherwise the decision of the Standards Committee will become final. The request for a review must be in writing and must be submitted to the Monitoring Officer. If a request for a review is received, the decision of the Standards Committee (including all the papers

considered by the Standards Committee) will be referred to an Independent Person of another Local Authority. The Independent Person will review the case on the information provided and will provide a report to the Standards Committee. The report to the Standards Committee will provide any comments the Independent Person considers are appropriate and relevant, taking into account the basis of the request for review from the Member.

15.4 Upon the receipt of the Independent Person's report, the Standards Committee will consider the Independent Person's comments, the reasons submitted for the review by the member and will determine whether to confirm the decision of the Standards Committee, amend the decision or substitute it with an alternative decision – this could include concluding that no breach of the Code occurred.

15.5 No further right of appeal or review of the Standards Committee's decision within the Council is available. However, if the member who is the subject of the complaint considers that the Council has failed to deal with the complaint properly, he/she may make a complaint to the Local Government Ombudsman.

Appendix One - The Council's Code of Conduct

Appendix Two - Complaint Form

Appendix Three - Assessment Criteria

Appendix Four - Procedure for Investigations

Appendix Five - Procedure for Hearings

# Code of Conduct for Members

The Council of the City of Sunderland (“the Council”) has adopted the following code which has effect from 1 July 2012 and which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

**This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.**

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council but is not one of its elected members. The code is intended to be consistent with Nolan’s Seven Principles of Public Life, and should be read in the light of those principles, namely that Council Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

## General Conduct

1. You must treat others with respect, including Council officers and other elected members.
2. You must not bully any person (including specifically any Council employee) and you must not intimidate or improperly influence or attempt to intimidate or improperly influence any person who is involved in any complaint about any alleged breach of this code of conduct.
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Council which seeks to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct and which is listed in the annex to this Code.
7. When using or authorising the use by others of the resources of the Council, you must act in accordance with the Council’s



reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.

8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
  - a) You have the consent of a person authorised to give it; or
  - b) You are required by law to do so; or
  - c) The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
  - d) The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Council which is subsequently subject to scrutiny by an overview and scrutiny committee of the Council, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist, it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Council in order to reach a view as to its merits or effectiveness.

## **Registration of Interests**

11. Subject to paragraph 12, you must register in the Council's Register of Members' Interests information about your personal interests. In this code of conduct 'your personal interests' means any 'Disclosable Pecuniary Interest' (as defined by regulations made from time to time by the Secretary of State) which you know about and which is held by
  1. you, or
  2. your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners.

You must register information about your personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Council; and
  - any change taking place in your personal interests.
- (Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code. A list of Disclosable Pecuniary Interests as currently defined by regulations is set out in Annex 2).

12. Where you think that disclosure of the details of any of your personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, you may inform the Monitoring Officer; and if the Monitoring Officer agrees, a note will be made in the Register to the effect that you have a personal interest, details of which are withheld under Section 32 of the Localism Act 2011.

### **Declaration of Interests**

13. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are, or ought reasonably to be, aware that any of your personal interests are relevant to an item of business which is being considered, then unless the interest is one which has been noted under paragraph 12, you must disclose to that meeting the existence and nature of that interest at the start of that item of business, or when the interest becomes apparent, if later.
14. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered at that meeting, you may not (unless you have a relevant dispensation granted under section 33 of the Localism Act 2011) :
  - a) participate (or further participate) in any discussion of the matter at the meeting; or
  - b) participate in any vote (or further vote) taken on the matter at the meeting.
15. If a function of the Council can be discharged by you as a member acting alone and you are aware you have a Disclosable Pecuniary Interest in any matter to be dealt with by you in the course of discharging that function, you shall not deal with that matter in any way (except to enable it to be dealt with by someone else).  
(Note: Failure, without reasonable excuse, to comply with paragraph 14 or 15 is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)
16. You must comply with any standing order adopted by the Council which requires Members to leave the room during any meeting at which a matter in which they have a Disclosable Pecuniary Interest is being discussed.

## **Nolan's Seven Principles of Public Life**

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

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.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.

**(as defined by regulations made by the Secretary of State under section 30 Localism Act 2011 (the Regulations))**

**Please note:** The following interests are Disclosable Pecuniary Interests if they are an interest of either (a) yourself, or (b) your spouse or civil partner, or (c) a person with whom you are living as husband and wife, or (d) a person with whom you are living as if you were civil partners (all of whom are referred to as “relevant persons”):

**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 expenses 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 Council —  
(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: These descriptions of interests are subject to the following definitions;**

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

**Associated Protocols**

The Council has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

Protocol on Member / Employee Relations

Protocol for Members in relation to Development Control Matters.

Protocol on the use of Civic Cars

Protocol for Members in relation to Licensing Matters

Protocol for Members and Voting Co-opted Members – Use of Council Resources and Equipment

Guidance for Members in Relation to the Use of Council ICT Facilities

Protocol for Use of Member Websites

Remote intranet / Internet Access for Members

Protocol in Relation to Members' Business Dealings with the Council



# COMPLAINT FORM – Alleged Breach of Members’ Code of Conduct

## Your details

1. Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- the clerk of Hetton Town Council (if your complaint is against a Town Councillor)
- the Standards Committee of the Council
- any other person whom we consider it necessary to inform to investigate your complaint properly

We may also inform the Council’s Independent Person(s).

We will usually tell them your name and either provide them with a copy of your complaint or a summary of it. If you have serious concerns about your name and a copy of your complaint or a summary being released, please complete section 6 of this form.

2. Please tell us which complainant type best describes you:

- ☐ Member of the public
- ☐ An elected or co-opted member of an authority
- ☐ An independent member of the standards committee
- ☐ Member of Parliament
- ☐ Local authority monitoring officer
- ☐ Other council officer or authority employee
- ☐ Other ( )

3. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

4. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is very important that you provide all the information you wish to have taken into account by the monitoring officer (or the Standards Committee if the complaint is referred to that Committee) when he or she decides whether to refer your complaint for investigation. For example:

- You should be specific, wherever possible; about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.



Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

## **5. Action on receipt of your complaint**

We will write to you to let you know that we have received your complaint. Your complaint will then be assessed either by the Monitoring Officer or, if he/she considers it is inappropriate for him/her to deal with it, it will be assessed by the Standards Committee.

We may decide that it will not be investigated for one or more of a number of reasons, for example:

- Complaints where a member is not named.
- Complaints that are not in writing
- Incidents or actions that are not covered by the Code of Conduct
- Incidents that are about a fault in the way the authority has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman
- Complaints about people employed by local authorities
- Incidents that happened before a member was elected.

If we decide not to refer your complaint for investigation, we will write to you explaining why.

If we decide to refer your complaint for investigation, we will notify you accordingly. Following the completion of an investigation into an allegation, if the Investigating Officer concludes that the member concerned has breached the Code of Conduct, then unless the complaint can be resolved informally, the Council's Standards Committee will meet to consider the allegation and the findings of the investigation.

**Only complete this next section if you are requesting that your identity is kept confidential**

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a copy of your complaint or a summary of it.

We are unlikely to withhold your identity or the details of your complaint other than in exceptional circumstances (e.g. that you have good reason to believe that you will be at risk of physical harm, or your employment will be jeopardised if your identity is disclosed, or there are medical risks (supported by medical evidence) associated with your identity being disclosed).

Please note that requests for withholding your identity and/or details of your complaint, either altogether or for a period of time, will not automatically be granted. Any request for confidentiality will be considered as a preliminary matter. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances, where the matter complained about is very serious, we can proceed with an investigation and disclose your name, even if you have expressly asked us not to. You should also note that when a matter is referred for investigation, it is likely that at some point in the process we will have to tell the member your identity and the details of the complaint, to enable them to respond and for the investigation to be completed.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

**Additional Help**

7. Complaints must be submitted in writing. Fax and electronic submissions are permissible. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

You should contact Mrs M Douglas, Complaints and Feedback Team Manager (0191) 561 1065, email: [Margaret.douglas@sunderland.gov.uk](mailto:Margaret.douglas@sunderland.gov.uk).

**Signed**

**Dated**

This form once completed should be sent, along with any supporting documents, to:

Elaine Waugh  
Monitoring Officer  
Sunderland City Council  
PO Box 100  
Civic Centre  
Sunderland  
SR2 7DN

or e-mailed to [City.Solicitor@sunderland.gov.uk](mailto:City.Solicitor@sunderland.gov.uk)

## **Equality Monitoring Form**

Sunderland City Council operates an Equality Policy. To help us make sure that everybody is treated fairly and equally we need to know who is making complaints. This information will help us to develop and change our policies and practices to ensure that no one is discriminated against.

To help us to do this we request that you complete the questions below. You do not have to do so but this information would be helpful to us. All of the information you give will be treated with the strictest of confidence and will be used for monitoring purposes only.

### **Are you:**

Male ☐

Female ☐

### **What is your age group?**

15 and under ☐ 16-24 ☐ 25-39 ☐ 40-59 ☐ 60-64 ☐

65-74 ☐ 75+ ☐

### **Do you have any long standing illness or disability?**

(Long standing means anything that has troubled you over a period of time or that is likely to affect you over a period of time)

Yes ☐

No ☐

If yes, does this illness or disability limit your activities in any way?

Yes ☐

No ☐

Please state the impairment type(s) which applies to you:

Mobility ☐

Visual impairment ☐

Hearing Impairment/Deaf ☐

Mental Health diagnosis ☐

Other ☐

Prefer not to say ☐

### **What is your ethnic group?**

#### **A. White**

British ☐

Irish ☐

Other ☐ Please state .....

**B. Mixed**

- White and Black Caribbean ☐  
White and Asian ☐  
White and Black African ☐  
Any other mixed background ☐ Please state .....

**C. Asian or Asian British**

- Indian ☐  
Bangladeshi ☐  
Pakistani ☐  
Any other Asian background ☐ Please state .....

**D. Black or Black British**

- Caribbean ☐  
African ☐  
Any other Black background ☐ Please state .....

**E. Chinese**☐**F. Any other ethnic group**

☐ Please state .....

**What is your sexual orientation?**

- Bisexual ☐  
Gay Man ☐  
Gay women/lesbian ☐  
Heterosexual/straight ☐  
Other ☐  
Prefer not to say ☐

**What is your religion? (Tick one box only)**

- None ☐  
Christian ☐  
Buddhist ☐  
Hindu ☐  
Jewish ☐  
Muslim ☐  
Sikh ☐  
Any other religion ☐ Please state. ....  
Prefer not to say ☐

### Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

**1. Has the complainant submitted enough information to satisfy the Monitoring Officer (or the Standards Committee if appropriate) that the complaint should be referred for investigation or other action?**

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.

**2. Is the complaint about someone who is no longer a member of the Council, but is a member of another authority? If so, should the complaint be referred to the monitoring officer of that other authority?**

If yes:

The complaint will be referred to the monitoring officer of that other authority to consider.

**3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If yes:

There may be nothing more to be gained by further action being taken.

**4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes:

Further action may not be warranted.

**5. Does the complaint appear too trivial to justify the cost or inconvenience of further action?**

If yes:

Further action will not be warranted.

**6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If yes:

Further action will not normally be warranted.

**7. Is the complaint anonymous?**

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

**CODE OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS**

**PROCEDURE FOR INVESTIGATION OF COMPLAINTS**

**1. Introduction**

- 1.1 Where the Monitoring Officer or Standards Committee has decided to refer a complaint about a member for investigation, the Monitoring Officer must then arrange for an Investigating Officer to investigate and prepare a report.
- 1.2 The following is the procedure which will normally be followed in such investigations, although the Monitoring Officer may vary the procedure in any particular case if he/she considers this desirable in the interests of justice or fairness or the effective conduct of the investigation.

**1.3. Interpretation**

- 1.3.1 "Member" means the Member of Sunderland City Council or Hetton Town Council who is the subject of the complaint.
- 1.3.2 "Investigating Officer" means the person appointed by the Monitoring Officer to undertake the investigation.
- 1.3.3 "Complainant" means the person who has made the complaint against the Member.
- 1.3.4 "Committee" means the Standards Committee or any Sub-Committee to which it has delegated the conduct of the hearing.
- 1.3.5 'Legal adviser' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.

**2 Action Following Decision to Investigate**

**2.1 Appointment of Investigating Officer**

Where the Monitoring Officer or the Standards Committee decides that an allegation should be investigated, the Monitoring Officer will appoint an Investigating Officer and instruct him/her to investigate the allegation and produce a report thereon. The Investigating Officer may be an officer of the authority (including the Monitoring Officer), an officer of another local authority, or an external person.

- 2.2 The Investigating Officer may appoint persons to assist him/her and may obtain such professional advice as may be necessary for the conduct of the investigation.

- 2.3 The Monitoring Officer will notify in writing the Member and the Complainant and the Independent Person(s) that an investigation is to be undertaken and will confirm

- 2.3.1 the identity of the Complainant;
- 2.3.2 the conduct which is the subject of the allegation;
- 2.3.3 the section(s) of the Code of Conduct which appear(s) to be relevant to the allegation;
- 2.3.4 the identity of the Investigating Officer.

The Monitoring Officer will at the same time also notify the Clerk to the Town Council of these matters if the Member is a Town Councillor.

- 2.4 The Monitoring Officer may withhold some or all of this information from the Member if the Complainant has demonstrated exceptional reasons as to why such information may be withheld or where disclosure of details of the complaint to the Member at this stage of the process might prejudice the investigation.

In most cases, it will become necessary at some point for the Member to be informed of the identity of the Complainant and in all cases, for the Member to be informed of the nature of the allegations. The Monitoring Officer will decide whether and at what stage this information will be provided to the Member.

- 2.5 Initial response of the Member

In notifying the Member of the referral for investigation, the Monitoring Officer shall also request the Member to notify the Investigating Officer in writing, within 10 working days, of the following:

- 2.5.1 whether the Member admits or denies the alleged breach of the Code;
- 2.5.2 any initial comment, explanation or representations which the Member wishes to make in relation to the allegation;
- 2.5.3 any documents the Member would wish the Investigating Officer to take into account in the investigation, where possible providing copies of these documents, and advising where the originals can be inspected;
- 2.5.4 the name, address and telephone number (or other contact details) of any person whom the Member would wish the Investigating Officer to interview in the course of the investigation, and the relevance of that person;
- 2.5.5 any information the Member would wish the Investigating Officer to seek from any person or organisation;



2.5.6 any other information which the Member considers might be relevant to or assist the investigation.

2.6 Supporting information from the Complainant

When notifying the Complainant that the matter has been referred for investigation, the Monitoring Officer shall also request that person to notify the Investigating Officer in writing within 10 working days of:

2.6.1 any documents which he/she would wish the Investigating Officer to take into account in the investigation, where possible providing copies of these documents, and advising where the original documents may be inspected;

2.6.2 the name, address and telephone number (or other contact details) of any person whom the Complainant would wish the Investigating Officer to interview in the course of the investigation and the relevance of that person;

2.6.3 any information which the Complainant would wish the Investigating Officer to seek from any person or organisation;

2.6.4 any additional information which the Complainant has and which might be relevant to, or assist, the investigation.

3. **Conduct of Investigation**

3.1 The purpose of the investigation is to enable the Investigating Officer to prepare a report which will provide sufficient information to determine whether the Member has acted in breach of the Code of Conduct and, where there has been a breach, whether any action should be taken, and if so, what action.

3.2 The Investigating Officer will conduct the investigation in such manner as he/she considers best able to ascertain all relevant facts and to achieve the purpose of the investigation, having regard to the rules of natural justice and the need for fairness.

3.3 The Investigating Officer will be entitled to seek all relevant information (including documents) that appears necessary or expedient to the conduct of the investigation and can make enquiries of any person believed to have such information, including the Member, the Complainant, other Members or officers of the Council and third parties. All such persons will be expected to co-operate fully with the Investigating Officer and respond properly to such enquiries and provide such information as they can and to attend for interview by the Investigating Officer if requested.

- 3.4 The Investigating Officer will be able to seek information in such manner as he/she thinks appropriate, which may include in writing, by telephone or email, or in person. He/she will attempt to arrange any interviews at a time and place convenient to those concerned.
- 3.5 Any person who appears before the Investigating Officer for interview may be accompanied by a legal representative or friend, provided such a person is not a potential witness in the investigation. An interview or telephone conversation may be tape recorded to save time and ensure accuracy, but only with the consent of both the Investigating Officer and the interviewee.
- 3.6 The Investigating Officer may, where he/she considers it appropriate to facilitate the investigation, reimburse any person who provides a document, information or advice with their reasonable costs incurred in so doing.
- 3.7 Other Breaches
- If during the investigation, the Investigating Officer becomes aware of any other matter which appears to him / her to indicate a breach of the Code by the Member (apart from the breach which he/she is currently investigating), the Investigating Officer shall report the matter to the Monitoring Officer who will provide the Member with details of the matter and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Code. The Monitoring Officer will then determine whether the additional matter should also be investigated.
- 3.8 The Monitoring Officer may in certain circumstances defer an investigation if he/she considers it appropriate, for example because it might prejudice some other investigation or court proceedings concerning the matter.

## **4 The Draft Report**

- 4.1 On completion of his/her investigation, the Investigating Officer shall prepare a draft report marked 'confidential' setting out:
- 4.1.1 details of the allegation;
  - 4.1.2 the relevant provisions of the Code of Conduct and any relevant Protocol;
  - 4.1.3 the member's response to the allegation (if any);
  - 4.1.4 any relevant information, advice and explanations obtained during the investigation;
  - 4.1.5 a list of any relevant documents;
  - 4.1.6 a list of persons interviewed or from whom information has been sought;
  - 4.1.7 a note of any person or organisation who has failed to co-operate with the investigation and the manner of such failure;
  - 4.1.8 a statement of the Investigating Officer's draft findings of fact, with reasons;

- 4.1.9 the Investigating Officer's provisional conclusion as to whether the member has failed to comply with the Code of Conduct, with reasons;
- 4.2 The draft report will also state that it does not necessarily represent the Investigating Officer's final finding, and that he/she will produce a final report once he/she has considered any comments received on the draft report.
- 4.3 The Investigating Officer shall send a copy of the draft report, in confidence, to the Member and the Complainant, and request that they send any comments on it to him/her in writing within 10 working days of receipt. This is an opportunity for the Member and Complainant to identify any matters with which they disagree or which they believe require further consideration.
- 4.4 Before issuing the draft report, the Investigating Officer may also send relevant extracts from it, in confidence, to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her in writing within 10 days.

## **5 The Final Report**

- 5.1 After the expiry of the period referred to in paragraph 4.3 (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and if appropriate amend his/her draft report in the light of any comments received and expeditiously produce a final report, which will be given to the Monitoring Officer.
- 5.2 The report will state that it represents the Investigating Officer's final findings. The report should have appended to it copies of any significant documents which the Investigating Officer has relied on in reaching his/her conclusions, such as notes of telephone conversations, letters, and notes of interviews and witnesses.

## **6 A Finding of No Breach of the Code - Procedure**

- 6.1 If the Investigating Officer concludes there has not been a breach of the Code, the Monitoring Officer will consider whether he/she is satisfied that the Investigating Officer's report is sufficient and if so, he/she will close the matter, provide a copy of the report to the Member and Complainant, the Independent Person(s) (and the Clerk to the Town Council where the complaint relates to a Town Councillor) and will report the outcome to the Standards Committee for information.
- 6.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he or she may ask the Investigating Officer to reconsider his/her report.

The Monitoring Officer may also refer the findings to the Standards Committee to decide if a hearing is nevertheless called for, if he or she considers it appropriate, after consulting the Independent Person(s).

- 6.3 Where the Standards Committee considers the report in accordance with paragraph 6.2 above, it shall, after considering any views put forward by the Independent Person(s), make one of the following findings:

- that it accepts the Investigating Officers' finding that the member has not failed to comply with the Code of Conduct as set out in the allegation; or
- that the matter should be considered at a hearing of the Standards Committee

Where the Committee accepts the Investigating Officer's finding that there was no failure to comply with the Code of Conduct, the Monitoring Officer shall send a written notice of that finding and the reasons on which it was based, to the Member and the Complainant, the Independent Person(s) (and the Clerk to the Town Council, where appropriate).

The Monitoring Officer must ask the Member whether he/she agrees to publication of a notice of the finding.

- 6.5 Where the Committee finds that the matter should be considered at a full hearing or the Investigating Officer's report contains a finding that the Member did fail to comply with the Code of Conduct, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the Procedure for Hearings.

## **7 A Finding of a Breach of the Code – Procedure**

- 7.1 If the Investigating Officer finds there has been a failure to comply with the Code, the Monitoring Officer will provide a copy of the report to the Member, the Complainant, the Independent Person(s), the Chair of the Standards Committee (and the Clerk to the Town Council where the complaint relates to a Town Councillor) and will either refer the matter for local hearing before the Standards Committee and/or seek local resolution.
- 7.2 There may still be an opportunity for local resolution, avoiding the necessity of a hearing. An investigation report may cause the Member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. At this stage, the Monitoring Officer may only seek to agree a local resolution after consultation with the Independent Person(s) and where the Complainant is satisfied with the outcome. If local resolution is agreed, any arrangements for holding a hearing will be discontinued. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards

Committee for information, but will take no further action. Where appropriate, the Clerk to Hetton Town Council will also be notified.

- 7.3 If local resolution is not possible, the Monitoring Officer will refer the matter to the Standards Committee for hearing.

## **CODE OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS**

### **PROCEDURE FOR HEARING OF COMPLAINTS**

#### **A Pre-Hearing Process**

##### **1 Introduction**

- 1.1 The following is the procedure which will be normally followed by Sunderland City Council's Standards Committee when hearing complaints that a Member has breached the Code of Conduct.
- 1.2 **Interpretation**
  - 1.2.1 "Member" means the Member of Sunderland City Council or Hetton Town Council who is the subject of the complaint.
  - 1.2.2 "Investigating Officer" means the person appointed by the Monitoring Officer to undertake the local investigation.
  - 1.2.3 "Complainant" means the person who has made the complaint against the Member.
  - 1.2.4 "Committee" means the Standards Committee or any Sub-Committee to which it has delegated the conduct of the hearing.
  - 1.2.5 'Legal adviser' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.

##### **2 Notification to Member**

- 2.1 The Monitoring Officer shall send a copy of the Investigating Officer's final investigation report to the Member, the Complainant, the Independent Person(s) and the clerk to the Town Council if appropriate.
- 2.2 When the Monitoring Officer sends the final investigation report to the Member, he / she will ask for a written response from the Member within 10 working days indicating whether the Member
  - 2.2.1 disagrees with any of the findings of fact in the investigation report, including reasons for that disagreement;
  - 2.2.2 wants to be represented at the hearing by a solicitor, barrister or any other person (if the Member wishes to have a non-legal representative, the Member must obtain the Committee's consent);

- 2.2.3 wants to give evidence to the Standards Committee, either verbally or in writing;
- 2.2.4 wants to call relevant witnesses to give evidence to the Standards Committee;
- 2.2.5 wants any part of the hearing to be held in private including reasons for that request;
- 2.2.6 wants any part of the investigation report or other relevant documents to be withheld from the public, including reasons for that request.
- 2.2.7 can attend the hearing on the proposed date;
- 2.3 The Monitoring Officer will also inform the Member that if, at the meeting of the Standards Committee, he/she seeks to dispute any matter contained in the report, without having previously notified his/her intention to do so, the Standards Committee may either adjourn the meeting to enable the Investigating Officer to provide a response, or refuse to allow the disputed matter to be raised.
- 2.4 The Monitoring Officer may agree an extension of the period of time for provision of a response.

### **3 Investigating Officer's response**

- 3.1 Upon expiry of the period referred to above (or such extended period as the Monitoring Officer may allow), the Member's written response shall be forwarded to the Investigating Officer, who will be invited to comment on the Member's response within 10 working days and to say whether he or she:
  - 3.1.1 wants to be represented at the hearing (although the Investigating Officer will be expected to attend the hearing in any event).
  - 3.1.2 wants to call relevant witnesses to give evidence to the Standards Committee.
  - 3.1.3 wants any part of the hearing to be held in private, including reasons for that request.
  - 3.1.4 wants any part of the Investigation Report or other relevant documents to be withheld from the public, including reasons for that request.

The Monitoring Officer may agree an extension of the period of time for provision of a response.

- 3.2 Upon receipt of the responses, the Monitoring Officer will liaise with the Chair of the Standards Committee regarding the arrangements for a meeting of the Committee to consider the complaint. The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, following advice from the legal advisor, the Chair may limit the number of witnesses if he/she believes the number requested is unreasonable or that some witnesses will simply be repeating the evidence of earlier witnesses or else will not provide evidence that will assist the Committee to reach its decision.
- 3.3 Nothing in this procedure shall prevent the Chair from requesting the attendance of additional witnesses whose evidence he/she considers would assist the Committee.

#### **4 Convening of Standards Committee**

- 4.1 The Monitoring Officer, in consultation with the Chair of the Standards Committee will then write to the Member, the Complainant and the Independent Person(s) to
- Confirm a date, time and place for the hearing
  - Confirm the main findings of fact in the Investigation Report that are agreed;
  - Confirm the main findings of fact in the Investigation Report that are not agreed;
  - Confirm the names of any witnesses who will be asked to give evidence, subject to the power of the Standards Committee to make a ruling on this at the hearing; and
  - Outline the proposed procedure for the hearing, identifying which parts, if any, may be considered in private
- 4.2 Where the Chair of the Standards Committee considers that the investigation report and/or any of the written statements in response are likely to disclose any exempt information and in consequence that it is likely that the Standards Committee will, during consideration of these matters, not be open to the public, he/she shall instruct the legal adviser not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

#### **B The Hearing – General Information**

#### **5 Conduct of the Hearing**

- 5.1 The Committee shall decide, on the balance of probability, whether the grounds of the complaint are made out. Each Member of the Committee, other than the representatives of Hetton Town Council who are non-voting co-opted Members, shall have one vote and all matters/issues shall be decided by a simple majority of votes cast. The Chair has a casting vote.
- 5.2 The meeting of the Committee will be open to the public and press



except when confidential information or exempt information under Schedule 12A Local Government Act 1972 is likely to be disclosed and during the deliberations of the Standards Committee referred to in Paragraphs 13 and 15.

There will be a presumption that the Hearing will be held in public where possible to make sure that the hearing process is open and fair. If appropriate, arrangements may be made for the hearing to be held in public but for certain documentation to remain confidential where they contain exempt or confidential information.

## **6 Independent Person**

- 6.1 The Independent Person(s) will be invited to attend any meetings of the Standards Committee to conduct a hearing into a complaint. His/her views must be sought and taken into consideration before the Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.
- 6.2 Where an Independent Person considers that they may have a conflict of interest (e.g. due to the nature of information provided to them by the Member or because they are a close associate of the Complainant) it will be appropriate for them to indicate that they consider they have a conflict and to decline to attend the hearing or submit any further comments in response to the Council's consultation with them.

## **7 Representation**

- 7.1 The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

## **8 Legal advice**

- 8.1 The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member and the Investigating Officer if they are present.

## **9 Non attendance by the Member**

- 9.1 If the Member does not attend the hearing, the Committee may consider the Investigating Officer's report in the Member's absence. If the Committee is satisfied with the Member's reason for not being able to attend the hearing, it may arrange for the hearing to be held on another date. Where the Committee proceeds in the Member's absence, this procedure shall be adapted as necessary, giving any representative of the Member who is present, such rights as would have been given to the Member.

## **C The Hearing – Order of Proceedings**

### **10 Setting the scene**

- 10.1 After everyone involved in the hearing has been formally introduced, the Chair should explain how the Committee is going to conduct the hearing.
- 10.2 The Chairman may at his/her discretion make changes to the procedure as he/she thinks fit in order to ensure a fair and efficient hearing.

### **11 Preliminary procedural issues**

- 11.1 The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.
- 11.2 The Chairman may invite the Investigating Officer and/or the Member to make representations as to why the Committee should exclude the press and public. Where the Committee decides that it will not exclude the press and public, the Governance Services Officer shall provide copies of the agenda and reports to any Members of the press and public who are present.

### **12 Evidence and Questioning**

- 12.1 The Investigating Officer will present his/her case and if there is any disagreement as to the facts of the case, the Investigating Officer will be invited to support the relevant findings of fact in the report, calling supporting witnesses, as agreed by the Chair.
- 12.2 The Member will be given the opportunity to ask questions of the Investigating Officer and any witnesses called by the Investigating Officer.
- 12.3 The Committee may ask questions of the Investigator and the witnesses.
- 12.4 The Member will present his/her case and if there is any disagreement as to the facts of the case, the Member will be invited to support his/her version of the facts by calling supporting witnesses, as agreed by the Chair.
- 12.5 The Investigator will have the opportunity to ask questions of the Member and his/her witnesses.
- 12.6 The Committee may ask questions of the Member and his/her witnesses.
- 12.7 At any time, the Committee may question any of the people involved or any of the witnesses.

- 12.8 If the Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Committee will consider whether it would be in the public interest to continue in their absence.

After considering the Member's explanation for not raising the issue at an earlier stage and any comments of the Investigating Officer if present, the Committee may then:

- 12.8.1 continue with the hearing, relying on the information in the Investigating Officer's report or;
  - 12.8.2 allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary or;
  - 12.8.3 postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if they are not already.
- 12.9 Where appropriate, the Investigating Officer may make representations on behalf of the Complainant to the Committee.
- 12.10 The Committee may adjourn the hearing on one occasion only to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee.
- 12.11 The Investigating Officer and then the Member will be invited to make any final comments by way of summing up their representations, before the Committee retires to consider what findings to adopt.

### **13 Decision by the Standards Committee**

- 13.1 The Committee will consider in private session which of the following findings to adopt:
- 13.1.1 that there is no evidence of a failure to comply with the Code of Conduct.
  - 13.1.2 that the Member has failed to comply with the Code of Conduct, but that no action needs to be taken.
  - 13.1.3 that the Member has failed to comply with the Code of Conduct and that it is minded to impose a sanction.

It will consult the Independent Person(s) before making its decision.

### **14 If the Member has not failed to follow the Code of Conduct**

- 14.1 If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Council or Town Council.

The Committee will resume the public session and the Chair will announce the Committee's decision and the reasons for it. The Committee will also determine whether there shall be publication of its findings (see paragraph 17).

## **15 If the Member has failed to follow the Code of Conduct**

15.1 If the Committee decides that the Member has failed to follow the Code of Conduct, it will resume the public session and the Chair will announce the Committee's decision and the reasons for it. The Chair will invite the Investigating Officer and the Member to make representations as to:

15.1.1 whether the Committee should apply a sanction;

15.1.2 what form any sanction should take.

15.2 The Committee will then deliberate in private to consider whether to impose a sanction on the Member and, if so, what the sanction should be. The Committee will consult the Independent Person(s) before making its determination.

15.3 The sanctions available to the Committee are set out in paragraph 16 below.

15.4 On their return, the Chair will announce the Committee's decision and the reasons for it.

15.5 The Committee will determine whether there should also be publication of a summary of the findings. (See paragraph 17)

## **16 Sanctions available to the Committee**

16.1 The Committee may:

- Issue a formal censure by the Committee;
- Recommend to full Council, or to Hetton Town Council the issue of a formal censure by the Council or Town Council;
- Refer its findings to full Council, or to Hetton Town Council, for information;
- Publish its findings by such means as the Committee thinks fit;
- Recommend to the Council, or to Hetton Town Council, that the Member be removed from any or all Committees or Sub-Committees (subject to the approval of the Member's Group if applicable);
- Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to the Council, or to Hetton Town, that the Member be removed from all outside appointments to which she / he has been appointed or nominated by the Council or by Hetton Town Council;

- Instruct the Monitoring Officer to, or recommend that Hetton Town Council, offer training to the Member; or
- Recommend to the Council, or to Hetton Town Council, that it excludes the Member from the Council's offices or other premises or facilities, to the extent desirable and so as not to interfere with the democratic process, in particular the Member's ability to carry out his or her role as an elected Member;
- Such other recommendations as the Committee may think appropriate.

The Standards Committee has no power to suspend or disqualify the Member or to withdraw or suspend Members' or special responsibility allowances, or to restrict a Member's access to Council resources so that the Member is unable to perform his / her essential role as a councillor.

## **17 Notice of the Committee's findings**

- 17.1 Within two weeks of the end of the hearing, the Monitoring Officer will circulate a copy of the Committee's full written decision ("the Decision Notice") to
- (a) the Member
  - (b) the Complainant
  - (c) the Town Council, if applicable
  - (d) the Independent Person(s)
- 17.2 At the same time, subject to 17.3, the Monitoring Officer shall make the Decision Notice available for public inspection and shall also arrange for a summary of the findings to be published in such further manner as may be directed by the Standards Committee.
- 17.3 Where the Standards Committee determines that there has not been a breach of the Code, the notice referred to in 17.2 shall state that the Committee found that the Member had not failed to comply with the Code and shall give its reasons for that finding. This notice shall not be published if the Member so requests.
- 17.4 Where the Standards Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 17.2 shall:
- 17.4.1 state that the Standards Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure
  - 17.4.2 specify the details of the failure; and
  - 17.4.3 give reasons for the decision reached
- 17.5 Where the Standards Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 17.2 shall:

- 17.5.1 state that the Standards Committee found that the Member had failed to comply with the Code of Conduct
- 17.5.2 specify the details of the failure
- 17.5.3 give reasons for the decision reached; and
- 17.5.4 specify the sanction imposed
- 17.6 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

## **18 Review**

- 18.1 If a Member is aggrieved by a finding of the Standards Committee that he / she has failed to comply with the Code of Conduct and / or by a sanction imposed by the committee, he / she may request a review by an Independent Person of another Local Authority whose views, if critical of the original finding or sanction imposed, will result in the Standards Committee being required to reconsider its original decision.
- 18.2 The Member must send a written request for a review, with their detailed reasons for seeking a review, to the Monitoring Officer, within 5 working days of receipt of the decision notice, otherwise the decision of the Standards Committee will become final. If a request for a review is received, the decision of the Standards Committee (including all the papers considered by the Standards Committee) will be referred to an Independent Person of a neighbouring Local Authority. The Monitoring Officer will supply such Independent Person with a copy of the report and of the decision of the Committee, in order that they may carry out their review. The Independent Person will review the case on the information provided and will provide their views to the Standards Committee.
- 18.3 Upon the receipt of the Independent Person's report, the Standards Committee will consider the Independent Person's comments, the reasons submitted for the review by the Member and will determine whether to confirm its original decision, amend the decision or substitute it with an alternative decision – this could include concluding that no breach of the Code occurred.
- 18.4 No further right of appeal or review of the Standards Committee's decision within the Council is available. However, if the Member or Complainant considers that the Council has failed to deal with the Complaint properly, they may make a complaint to the Local Government Ombudsman.

## **COMPLAINTS AGAINST MEMBERS – MEDIA PROTOCOL**

- 1.1 This Protocol provides guidance for all Members of the Council on the appropriate procedures for dealing with the media in respect of complaints against Members.

Individual Members should not initiate press comment on complaints and investigations. The only exceptions are,

- (a) a Member against whom the complaint has been made; and
- (b) a Member who is a complainant

both of whom should ensure that any statement they choose to make is factually correct and does not breach any requirements of confidentiality.

- 1.2 The aim of the Protocol is to ensure a consistent approach.

### **2 Key Principles for dealing with the media**

- 2.1 All press statements about Standards Committee business should only be issued through the Council's Communications Team ("the Press Office") in accordance with the procedure set out below.
- 2.2 All press statements must be authorised by the Monitoring Officer.
- 2.3 The appropriate spokesperson to be quoted in any press statement will normally be either the Standards Committee Chair (who will comment on behalf of all Members of the Committee) or the Monitoring Officer.
- 2.4 Each situation should be treated according to the particular circumstances, for example, potential criminal proceedings or a potential appeal could influence the statements or releases issued by the Council. In this context, the Press Office should liaise with the Monitoring Officer to ensure that statements issued could not be seen as prejudicing potential criminal proceedings.
- 2.5 Should any Members of the Standards Committee be approached directly by the media with enquiries relating to Committee business, they should refer them to the Press Office to ensure a consistent response.

### **3 Nature of media comment**

- 3.1 To ensure fair and consistent treatment in all cases and a properly controlled release of information, the practice shall be as set out below:-
- (a) Receipt of Complaint

Where a complaint has been received, the Press Office will not confirm to the media that a complaint has been received until the Member who is the subject of the complaint has been notified. The Press Office will then limit their response to any media enquiry to confirming that the Monitoring Officer or Standards Committee will decide whether any complaint that has been received will be referred for investigation and that if the investigation concludes that a breach of the Code has occurred, then, unless the matter can be resolved informally, it will be considered by the Standards Committee.

(b) Ongoing investigations

All media enquiries should be referred to the Press Office. The Press Office will limit their response to:

- confirming that a complaint has been received and that an investigation is ongoing
- giving generic information about investigations generally and what they can entail
- explaining what the possible outcomes of investigations can be, in general terms

The Member who is the subject of the complaint, the Monitoring Officer and the Committee Chair should be informed, by the Press Office, of the media interest shown and the response given.

(c) Complaint upheld

Where a complaint is upheld and action taken, a press statement should be issued. This should be issued to the local media as appropriate. Any press statement will also be published on the Council's website. The press statement should include the following information:

- The nature of the complaint;
- The outcome;
- The Committee's reasons for reaching its decision;
- The action taken.

(d) Complaint not upheld

Where it is determined that no breach has occurred and no action is taken, no press statement should be issued unless the Member concerned or the Committee specifically requests otherwise. This may happen, for example, where there has already been press coverage or speculation on a particular investigation and there is a need to clarify the position. Where a



press statement is not issued, it is possible that media enquiries could still be received and such enquiries should be responded to so far as considered necessary.

#### **4 Monitoring of this Protocol**

- 4.1 The operation of this protocol will be regularly monitored by the Committee, the Monitoring Officer and the Director of Communications and Corporate Affairs.

## **Report to Standards Committee**

**18 February 2013**

### **Update on Assessment of Complaints**

#### **Report of the Head of Law and Governance**

1. Under the arrangements agreed by the Council, the Head of Law and Governance has delegated authority to assess complaints about members' conduct, in consultation with the Independent Persons, in order to determine whether or not they should be referred for investigation and is required to report the outcome of those assessments to the Standards Committee, for information.
2. A complaint was received from a member of the public, to the effect that in a public forum, a councillor accused them of harassment. In consultation with the Independent Persons, the Head of Law and Governance decided that no further action should be taken. It was not considered that the conduct complained about, if proven, would amount to a breach of the code of conduct and in any event, the alleged conduct was of a trivial nature which did not warrant the expense of an investigation.
3. The Independent Persons were also of the view that the matter did not warrant investigation.

#### **Recommendation**

That the Committee notes the report

No background papers were used in the preparation of this report

**Report to Standards Committee****18 February 2013****Amendment of Members' Code of Conduct / Recording of Gifts and Hospitality****Report of the Executive Director of Commercial and Corporate Services and Head of Law and Governance**

1. The Code of Conduct adopted by the Council requires members to register Disclosable Pecuniary Interests (DPIs), which are defined by regulations. The regulations do not include gifts and hospitality in the definition of DPIs and therefore, unlike the position under the previous standards regime, there is no legal requirement on members to record such matters.
2. Those authorities which have continued to make provision for recording gifts and hospitality have, for example, included provision in their Members' Code of Conduct for recording this in the Register of Members' Interests or alternatively, have made provision for members to notify such matters to the Monitoring Officer, who maintains a separate Record of Receipt of Gifts and Hospitality by Members.
3. In the interests of openness and transparency, it is proposed that members recommend Council to amend the Code of Conduct in order to reintroduce a provision for members and co-opted members to record offers of gifts and hospitality and that this provision comes into effect from the date of amendment.
4. Under the previous Code of Conduct, the requirement to register applied to gifts or hospitality with an estimated value of at least £25. It is suggested that if members are minded to make provision for registration, it would be appropriate to revise this amount and that £50 would be a reasonable level.
5. It is also proposed that the opportunity is taken to clarify that the Code applies to members and co-opted members and that for these purposes, under the Localism Act 2011, "co-opted members" refers to members with voting rights.
6. Appropriate amendments to the Code of Conduct are shown as tracked changes in the Appendix to this report.
7. **Recommendation**
  - 7.1 That Council be recommended to
    - 7.1.1 amend the Members' Code of Conduct as set out in the Appendix to this report in order to include a requirement, to take effect from the date of amendment, for members and co-opted members to register in the Council's Register of Members' Interests, any offer of a gift or hospitality with an estimated value of £50 and over and to clarify that the reference in the Code to co-opted members is to members who are not elected members but are members of a committee or subcommittee with a right to vote and

- 7.1.2 authorise the Head of Law and Governance to publicise the amendment to the Code of Conduct on the Council's website.

### **Background Papers**

There are no background papers to this report

# Code of Conduct for Members

The Council of the City of Sunderland ("the Council") has adopted the following code which ~~took~~ effect from 1 July 2012 and which ~~was amended on [insert date] and which~~ sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

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**This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.**

'Co-opted member' means any person who is a member of any committee or sub-committee of the Council ~~with a right to vote~~ but is not one of its elected members

The code is intended to be consistent with Nolan's Seven Principles of Public Life, and should be read in the light of those principles, namely that Council Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

## General Conduct

1. You must treat others with respect, including Council officers and other elected members.
2. You must not bully any person (including specifically any Council employee) and you must not intimidate or improperly influence or attempt to intimidate or improperly influence any person who is involved in any complaint about any alleged breach of this code of conduct.
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage
6. You must comply with any Protocol adopted by the Council which seeks to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct and which is listed in the annex to this Code.

7. When using or authorising the use by others of the resources of the Council, you must act in accordance with the Council's reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.
8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
  - a) You have the consent of a person authorised to give it; or
  - b) You are required by law to do so; or
  - c) The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
  - a) The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Council which is subsequently subject to scrutiny by an overview and scrutiny committee of the Council, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist, it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Council in order to reach a view as to its merits or effectiveness.

## Registration of Interests

11. Subject to paragraph 12, you must register in the Council's Register of Members' Interests information about your personal interests. In this code of conduct 'your personal interests' means

- (a) any 'Disclosable Pecuniary Interest' (as defined by regulations made from time to time by the Secretary of State) which you know about and which is held by
  1. you, or
  2. your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and

- (b) any person or organisation from whom you have received an offer of a gift or hospitality with an estimated value of £50 or more (whether or not you accept the offer) which is attributable to your position as an elected or co-opted member of the Council. In addition to recording the identity of the person or organisation who made the offer, you should record the nature of the gift or hospitality.

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(Note : paragraph 11 (b) relates only to your interests and not those of your spouse or civil partner).

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You must register information about your personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Council; and
- any change taking place in your personal interests.

(Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code. A list of Disclosable Pecuniary Interests as currently defined by regulations is set out in Annex 2)

12. Where you think that disclosure of the details of any of your personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, you may inform the Monitoring Officer; and if the Monitoring Officer agrees, a note will be made in the Register to the effect that you have a personal interest, details of which are withheld under Section 32 of the Localism Act 2011.

### Declaration of Interests

13. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are, or ought reasonably to be, aware that any of your Disclosable Pecuniary interests are relevant to an item of business which is being considered, then unless the interest is one which has been noted under paragraph 12, you must disclose to that meeting the existence and nature of that interest at the start of that item of business, or when the interest becomes apparent, if later.
14. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered at that meeting, you may not (unless you have a relevant dispensation granted under section 33 of the Localism Act 2011) :
  - a) participate (or further participate) in any discussion of the matter at the meeting; or
  - b) participate in any vote (or further vote) taken on the matter at the meeting.
15. If a function of the Council can be discharged by you as a member acting alone and you are aware you have a Disclosable Pecuniary Interest in any matter to be dealt with by you in the course of discharging that function, you shall not deal with that matter in any way (except to enable it to be dealt with by someone else).

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(Note: Failure, without reasonable excuse, to comply with paragraph 14 or 15 is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

16. You must comply with any standing order adopted by the Council which requires Members to leave the room during any meeting at which a matter in which they have a Disclosable Pecuniary Interest is being discussed.



## **Nolan's Seven Principles of Public Life**

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

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.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.

**Disclosable Pecuniary Interests**  
**(as defined by regulations made by the Secretary of State under section 30**  
**Localism Act 2011 (the Regulations))**

**Please note:** The following interests are Disclosable Pecuniary Interests if they are an interest of either (a) yourself, or (b) your spouse or civil partner, or (c) a person with whom you are living as husband and wife, or (d) a person with whom you are living as if you were civil partners (all of whom are referred to as “relevant persons”):

**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 expenses 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 Council —

- (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: These descriptions of interests are subject to the following definitions;**

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

**Associated Protocols**

The Council has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

Protocol on Member / Employee Relations

Protocol for Members in relation to Development Control Matters.

Protocol on the use of Civic Cars

Protocol for Members in relation to Licensing Matters

Protocol for Members and Voting Co-opted Members – Use of Council Resources and Equipment

Guidance for Members in Relation to the Use of Council ICT Facilities

Protocol for Use of Member Websites

Remote intranet / Internet Access for Members

Protocol in Relation to Members' Business Dealings with the Council

## Report to Standards Committee

18 February 2013

### 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





Department for  
Communities and  
Local Government

# Openness and transparency on personal interests

## **A guide for councillors**

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# The Guide

This guide on personal interests gives basic practical information about how to be open and transparent about your personal interests. It is designed to help councillors, including parish councillors, now that new standards arrangements have been introduced by the Localism Act 2011<sup>1</sup>.

## Why are there new rules?

Parliament has abolished the Standards Board regime and all the rules under it. It has done this because that centrally-imposed, bureaucratic regime had become a vehicle for petty, malicious and politically-motivated complaints against councillors. Rather than creating a culture of trust and openness between councillors and those they represent, it was damaging, without justification, the public's confidence in local democratic governance.

The new standards arrangements that Parliament has put in place mean that it is largely for councils themselves to decide their own local rules. It is essential that there is confidence that councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a councillor. Accordingly, within the new standards arrangements there are national rules about councillors' interests.<sup>2</sup>

Such rules, in one form or another, have existed for decades. The new rules are similar to the rules that were in place prior to the Standards Board regime. Those rules, originating in the Local Government Act 1972 and the Local Government and Housing Act 1989, involved local authority members registering their pecuniary interests in a publicly available register, and disclosing their interests and withdrawing from meetings in certain circumstances. Failure to comply with those rules was in certain circumstances a criminal offence, as is failure to comply in certain circumstances with the new rules.

## Does this affect me?

Yes, if you are an elected, co-opted, or appointed member of:

- a district, unitary, metropolitan, county or London borough council
- a parish or town council
- a fire and rescue authority
- a transport or other joint authority
- a combined authority or an economic prosperity board
- the London Fire and Emergency Planning Authority

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<sup>1</sup> The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice.

<sup>2</sup> The national rules are in Chapter 7 of the Localism Act 2011 and in the secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012/1464).

- the Broads Authority
- a National Park authority
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

## How will there be openness and transparency about my personal interests?

The national rules require your council or authority to adopt a code of conduct for its members and to have a register of members' interests.

The national rules require your council's code of conduct to comply with the Seven Principles of Public Life, and to set out how, in conformity with the rules, you will have to disclose and register your pecuniary and your other interests. Within these rules it is for your council to decide what its code of conduct says. An illustrative text for such a code is available on the Department's web site.<sup>3</sup>

Your council's or authority's monitoring officer (or in the case of a parish council the monitoring officer of the district or borough council) must establish and maintain your council's register of members' interests. Within the requirements of the national rules it is for your council or authority to determine what is to be entered in its register of members' interests.

## What personal interests should be entered in my council's or authority's register of members' interests?

Disclosable pecuniary interests, and any other of your personal interests which your council or authority, in particular through its code of conduct, has determined should be registered.

Any other of your personal interests which you have asked the monitoring officer, who is responsible for your council's or authority's register of members' interests, to enter in the register.

## What must I do about registering my personal interests?

Under your council's code of conduct you must act in conformity with the Seven Principles of Public Life. One of these is the principle of honesty - that **'holders of public office have a duty to declare any private interests**

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<sup>3</sup> <http://www.communities.gov.uk/publications/localgovernment/localcodeconduct>

**relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest'<sup>4</sup>.**

Your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council's or authority's register of members' interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.

All sitting councillors need to register their declarable interests. 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.

If you have a disclosable pecuniary interest which is not recorded in the register and which relates to any business that is or will be considered at a meeting where you are present, you must disclose<sup>5</sup> this to the meeting and tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must tell the monitoring officer within 28 days of disclosing the interest. For this purpose a meeting includes any meeting of your council or authority, of its executive or any committee of the executive, and of any committee, sub-committee, joint committee or joint sub-committee of your authority.

If you have a disclosable pecuniary interest which is not shown in the register and relates to any business on which you are acting alone, you must, within 28 days of becoming aware of this, tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must also stop dealing with the matter as soon as you become aware of having a disclosable pecuniary interest relating to the business.

When you are first elected, co-opted, or appointed a member to your council or authority, you must, within 28 days of becoming a member, tell the monitoring officer who is responsible for your council's or authority's register of members' interests about your disclosable pecuniary interests. If you are re-elected, re-co-opted, or reappointed a member, you need to tell the monitoring officer about only those disclosable pecuniary interests that are not already recorded in the register.

## What are 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

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<sup>4</sup> [http://www.public-standards.gov.uk/Library/Seven\\_principles.doc](http://www.public-standards.gov.uk/Library/Seven_principles.doc)

<sup>5</sup> If the interest is a sensitive interest you should disclose merely the fact that you have such a disclosable pecuniary interest, rather than the interest. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

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

## Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see annex). Interests of your spouse or civil partner, following the approach of the rules under the 1972 and 1989 Acts, are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

## Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is **your** disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.

## Does my signature need to be published online? Won't this put me at risk of identity theft?

There is no legal requirement for the personal signatures of councillors to be published online.

## Who can see the register of members' interests?

Except for parish councils, a council's or authority's register of members' interests must be available for inspection in the local area, and must be published on the council's or authority's website.

For parish councils, the monitoring officer who is responsible for the council's register of members' interests must arrange for the parish council's register of members' interests to be available for inspection in the district or borough, and must be published on the district or borough council's website.

Where the parish council has its own website, its register of members' interests must also be published on that website.

This is in line with the Government's policies of transparency and accountability, ensuring that the public have ready access to publicly available information.

## Is there any scope for withholding information on the published register?

Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

## When is information about my interests removed from my council's register of members' interests?

If you cease to have an interest, that interest can be removed from the register. If you cease to be a member of the authority, all of your interests can be removed from the register.

## What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting, participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

## Where these prohibitions apply, do I also have to leave the room?

Where your council's or authority's standing orders require this, you must leave the room. Even where there are no such standing orders, you must leave the room if you consider your continued presence is incompatible with your council's code of conduct or the Seven Principles of Public Life.

## When and how can I apply for a dispensation?

The rules allow your council or 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:

- 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,
- 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,
- the granting of the dispensation is in the interests of people living in the council's or authority's area,
- without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your council or authority.

## What happens if I don't follow the rules on disclosable pecuniary interests?

It is a criminal offence if, without a reasonable excuse, you fail to tell the monitoring officer about your disclosable pecuniary interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become 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 you are present, or
- on which you are acting alone.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your 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 you have a disclosable pecuniary interest.

If you are found guilty of such a criminal offence, you can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

## Where can I look at the national rules on pecuniary interests?

The national rules about pecuniary interests are set out in Chapter 7 of the Localism Act 2011, which is available on the internet here:

<http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

and in the secondary legislation made under the Act, in particular The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found here:

<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

# Annex

## Description of disclosable pecuniary interests

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- 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. 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.
- 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 -
  - under which goods or services are to be provided or works are to be executed; and
  - which has not been fully discharged.
- 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.
- 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.
- Any tenancy where (to your knowledge) -
  - the landlord is your council or authority; and
  - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -
  - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
  - (b) either -
    - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - 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.

**Report to Standards Committee****18 February 2013****Applications for Dispensations****Report of the Head of Law and Governance****Background**

1. As members are aware, the Localism Act 2011 made changes to the requirements regarding the registration and disclosure of members' interests. Included in these changes is the requirement that members do not participate in any discussion or vote on a matter at a meeting where they have a disclosable pecuniary interest (DPI) in the matter, unless a dispensation has been granted. The Act provides that the prohibition on participation does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation.
2. Under the previous legislation, specific exemptions were given to members so that they would not have a prejudicial interest (which would have prevented them from taking part in the decision making process) in any business that related to the functions of the authority in respect of:
  - a) housing, where the member was a tenant of the authority provided that those functions did not relate particularly to the member's tenancy or lease;
  - b) school meals or school transport and travelling expenses, where the member was a parent or guardian of a child in full time education, or was a parent governor of the school, unless it related particularly to the school which the child attended;
  - c) statutory sick pay under part XI of the Social Security Contributions and Benefits Act 1992 where the member was in receipt of or was entitled to the receipt of such pay.
  - d) an allowance, payment or indemnity given to members;
  - e) any ceremonial honour given to members;
  - f) setting council tax or a precept under the Local Government Finance Act 1992

These exemptions have not been carried over to the new legislation.

**Dispensations**

3. Section 33 of the Localism Act 2011 allows the Council, on written request made to the proper officer by a member of the authority, to grant a dispensation allowing the member to participate in the discussion and / or take part in any vote on a matter where they have a DPI.

Dispensations can be granted where:

- so many members have DPIs that it would impede the transaction of the business
  - without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter
  - the dispensation is considered to be in the interests of persons living in the authority's area
  - without the dispensation, no member of the Cabinet would be able to participate in any particular business transacted by the executive; or
  - the authority considers that it is otherwise appropriate to grant a dispensation
4. The Head of Law & Governance has delegated authority to grant dispensations where so many members have DPIs that it would impede the transaction of the business and also where, without the dispensation, no member of Cabinet would be able to participate in the business to be transacted by the executive. The Standards Committee has authority to grant dispensations on the remaining grounds.
  5. As is referred to in another report before this meeting, an area of uncertainty with the new Standards Regime is the question of when a member has a DPI in a matter, so that the prohibition on participation applies.
  6. Property interests are DPIs and therefore a number of authorities have taken the view that the non-participation provisions may be engaged when matters relating to the council tax are being discussed.

On 5 February 2013, Brandon Lewis MP issued a letter to local authority leaders expressing the view that councillors do not need to obtain dispensations to participate in discussions or vote on the council tax setting process and the local council tax support scheme.

The letter states:

*"Whilst my department does not issue legal advice, in our opinion, such dispensations are unnecessary. Council tax liability applies to the generality of the population; councillors have no unique position in that regard.*

*Being a council taxpayer or being eligible for a discount under the new local arrangements for council tax support are pecuniary interests, but **are not disclosable pecuniary interests** as specified in regulations.*

*Therefore a **councillor does not need to seek a dispensation** in order to participate in discussions or vote on decisions in the council tax setting process or local arrangements for council tax support. I made this clear in the Parliamentary debate, which I would encourage you to read.*

*Holders of public office should be guided by the Nolan Principles. I believe that the blanket act of every councillor declaring the obvious (that residents are liable for council tax) adds nothing to that cause. Indeed,*

*Section 106 of the Local Government Finance Act 1992 prohibits councillors who are in council tax arrears (by two or more months) from voting on Budgets. So there is a clear expectation that the generality of councillors are paying council tax."*

However, bearing in mind the terms of the legislation, the Head of Law and Governance remains of the view that while it may not have been the Government's intention that an interest in property affected by council tax would amount to a DPI when setting the council tax, this may well be an unintended legal consequence of the legislation.

7. A number of authorities that have taken this view have made arrangements for dispensations to be granted to their members.

It is considered that while there is uncertainty, particularly in view of the fact that there are now criminal sanctions for taking part in the consideration of a matter in which a member has a DPI, it is sensible for members to apply for dispensations.

8. The Head of Law and Governance has given consideration to those areas where she considers that the majority or a significant number or members may have a DPI and / or where it may be appropriate for dispensations to be granted. Whilst it is understood that some authorities have simply granted a 'general' dispensation to apply to all members in respect of specified areas of business, technically, under the legislation, a member should first submit a written application. Members have therefore been invited to make written applications for dispensations in respect of the following matters:
  - a) Where the matter relates to the housing functions of the Council and affects a registered provider of which the member or a relevant person is a tenant, (provided that the matter does not particularly relate to the tenancy or lease of the member or relevant person).
  - b) An allowance, payment or indemnity given to a member.
  - c) Any ceremonial honour given to a member.
  - d) Setting the council tax and budget or a precept under the Local Government Finance Act 1992 as amended from time to time or any superseding legislation.
  - e) Setting a local council tax reduction scheme for the purposes of the Local Government Finance Act 2012 as amended from time to time or any superseding legislation.
  - f) Matters relating to Sunderland City Council, Hetton Town Council, the Tyne & Wear Fire and Rescue Authority or the Integrated Transport Authority at any time when the member is a member or holds a position of responsibility and is in receipt of an allowance from the relevant authority.
  - g) Any matter relating to a trade union or other body which has made any payment or provided any other financial benefit in respect of any expenses incurred in carrying out duties as a

member, or towards election expenses (provided the matter does not particularly relate to the payment or financial benefit provided to the individual member).

9. Members will see that the business set out in 'a' to 'd' is very similar to the business included in the exemptions under the previous Standards Regime. A specific reference to setting the budget has been included in 'd' to reflect the fact that nationally, the practice was to take a broad approach to the interpretation of what was meant by the exemption for 'setting the Council Tax' and that this should be taken to include setting the budget. Category (e) relates to the local council tax support scheme which, as with the council tax, arguably is a matter in which all members with property interests will have an interest, to a greater or lesser extent.
10. With regard to category (f), there is some uncertainty regarding how the category of DPI which relates to 'any employment, office, trade, profession or vocation carried on for profit or gain' should be interpreted. Arguably this could apply to members who receive an allowance from bodies such as the Fire Authority and ITA. The dispensation proposed in respect of matters in paragraph 'f' will clarify that members who have a DPI by virtue of their membership of these bodies, will not automatically be prohibited from participating in matters relating to those bodies.
11. Finally, one of the categories of DPI relates to 'sponsorship.' Under this category, members must declare any payment or other financial benefit in respect of expenses incurred in carrying out duties as a member or towards their election expenses. Again, there is some uncertainty over whether this should be interpreted in such a way that the DPI would only be an issue at a meeting if the matter under consideration related particularly to the member's interest i.e. to the payment or financial benefit received, or whether it is intended to apply any wider than that. As there is some doubt as to how this should be applied, in order to avoid a member inadvertently committing a technical breach of the provisions regarding participation in meetings, it is proposed that members be awarded a dispensation in order to deal with any matters relating to a body from which they have received expenses etc.
12. In respect of the matters referred to at paragraph 8 (b),(d) and (e), it is considered likely that without the dispensations being granted, the number of members who will be prohibited from participating in the business would be so great that it would impede the transaction of the business.
13. In respect of all of the matters referred to at paragraph 8 (a) to (g), the committee may consider that the granting of the dispensations would be appropriate in order to enable full debate to take place on these areas and to avoid members inadvertently committing a technical breach of the legislation.

14. Applications for dispensations have been received from all elected members of the Council. Dispensations have previously been granted by the Head of Law and Governance to enable members to deal with matters relating to members' allowances and the council tax, including the local tax support scheme. These areas of Council business are also reflected in the current applications for dispensations and if the Committee is agreeable to granting the applications, this will have the advantage of the dispensations covering the various areas of council business referred to, running from the same date.

It is proposed that the dispensations be granted for a period of four years.

15. Unless there is further legislation or case law to clarify the uncertainties regarding DPIs, this issue will continue to arise following future elections and changes in Council membership. Members may therefore also consider it appropriate to delegate authority to the Head of Law and Governance to grant dispensations in the same terms where applications are received from members. (Any request for a dispensation in respect of any other area of Council business will of course be considered and dealt with either by the Head of Law and Governance or Standards Committee as appropriate, under the agreed arrangements).

#### **Bias / Predetermination**

16. For the avoidance of doubt, the granting of a dispensation does not override any issues of bias and / or predetermination. Therefore should there be a matter under discussion before the Council in which a member's interest (whether or not also registered as a DPI), gives rise to an issue of bias or predetermination, the member should still not take part in consideration of the matter under discussion. To do so could potentially expose the decision of the Council to risk of challenge and the member may also arguably be in breach of the general conduct provisions of the Members' Code of Conduct.

The intention of the proposed dispensations is to avoid members committing a "technical" breach of the legislation, in a situation where there is no prejudice to the public interest. Members will still need to be alive to those situations where their interest is such that there is an issue of bias or predetermination. In such circumstances they should declare their interest to the meeting and not take part in consideration of the matter.

17. By way of example, if the dispensation referred to in paragraph 8 (f) is granted, this will confirm that there will not automatically be any issue with a member of the Tyne and Wear Fire and Rescue Authority considering Council business which relates to that Authority. However, if the Fire Authority made an application for planning permission to this



Council, it would not be appropriate for such a member to take part in a meeting of the Development Control Sub Committee which was considering the planning application as, at common law, this could give rise to an appearance of bias.

Detailed advice has recently been circulated to members regarding bias and predetermination.

## **Recommendations**

It is recommended that:

1. dispensations be granted to all elected members of the Council, for a period of four years from the date of this decision, to enable them to participate in any meeting of the Council, including Cabinet, Committees, Sub-Committees, Panels and Boards, in any of the business referred to in paragraph 8 (a) to (g) of this report, including speaking and voting, provided that where the interest of the member is such that it gives rise to any issue of bias or predetermination in respect of the business being considered, the member shall not participate in the consideration of the business; and
2. the Head of Law and Governance be authorised to grant dispensations in similar terms to any individual who subsequently becomes a member of the Council and who submits a written application for such a dispensation.

## **Background Papers**

None