

Addendum to Item 8 – Report of the Standards Committee

The Localism Act 2011 – The Amended Standards Regime

Report of the Executive Director of Commercial and Corporate Services and Head of Law and Governance

Introduction

1. The draft Code of Conduct recommended by the Standards Committee is expressed to be subject to consideration of the regulations on Disclosable Pecuniary Interests (DPIs). These regulations have now been issued, together with a commencement and transitional provisions order, which confirms the implementation date of the new arrangements as 1 July 2012.

Disclosable Pecuniary interests

2. The categories of interest are set out in the regulations as below. The reference to “M” means a member of an authority and the reference to “relevant person” means the member or their spouse or civil partner, a person with whom the member is living as husband and wife, or a person with whom they are living as if they were civil partners.

Subject:	Prescribed Description:
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 relevant

	<p>authority-</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which 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)- <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	Any beneficial interest in securities of a body where: <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either-</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

3. In the absence of the regulations, the provisions in the draft Code proposed by the Standards Committee in respect of interests, were based on those in the existing Code. Some of those categories are now effectively covered by the regulations and should therefore be reflected as DPIs and listed in Annex 2 of the Code, rather than set out in paragraph 12.

However, that leaves three categories of interest in paragraph 12 of the draft Code which have not been included as DPIs in the regulations. These are as follows:

- “(a) Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Council;*
- (b) Any body which (i) exercises functions of a public nature or (ii) has charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management);*
- (c) Any person from whom you have received within the previous three years the offer of a gift or hospitality with the estimated value of more than £25.00 (whether or not you accept the offer) which is attributable to your position as an elected or co-opted member of the Council.”*

4. It is a matter for the Council whether it wishes to retain some or all of these three categories of interests as personal interests which must be registered and declared, notwithstanding that they are not DPIs.
5. In view of the implementation date of 1 July, it is unfortunate that the regulations were laid before Parliament as late as 8 June. This has left little time for detailed consideration of what, if any, other provisions regarding interests should be included in the Code, in the light of the categories set out in the regulations. It is also of some concern that despite the fact that participation in a matter in which a member has a DPI is a criminal offence, there is nothing in the regulations to clarify how a member is to judge whether or not a DPI is so close or relevant to an item under discussion at a meeting, that they may not participate in consideration of it. It is understood that CLG have indicated that there will be guidance on the regulations, however it has not said when such guidance will be issued.
6. In the circumstances, members may consider that, rather than add further complexity to the regime in respect of interests, at this stage, the provisions in the Code regarding interests should be confined to only those matters which have been defined as DPIs. The position may subsequently be reviewed by the new Standards Committee in the light of any future guidance / best practice that may emerge and of experience of the operation of the Code.
7. Should members be minded to take this approach, a draft of a proposed Code, amended accordingly, is annexed for approval.

8. In addition, the Commencement Order includes provisions for the coming into force of certain sections of the Localism Act 2011 so far as they enable an authority to take steps in preparation for the new regime. Arguably, this implies that any decisions which authorities made prior to these sections coming into force, in anticipation of the 1 July commencement date, will be of no effect. There was no advance warning given that such provisions would be included in the legislation.

In the circumstances, for the avoidance of doubt, it would be sensible for the Council to confirm the decision made at Annual Council to continue to have a Standards Committee from implementation of the new regime on 1 July.

Recommendations

1. That the Council approve and adopt a new Code of Conduct as set out in the annex to this addendum, to take effect from implementation of the new standards regime on 1 July.
2. That the Council confirms the decision made at Annual Council to continue to have a Standards Committee which, with effect from 1 July, will be comprised of 8 elected members and 2 non-voting co-opted members appointed by Hetton Town Council as follows:-

8 Members (7:1:0)

Councillor MacKnight
Councillor Marshall
Councillor Mordey
Councillor Price
Councillor Shattock
Councillor H. Trueman
Councillor Richardson

Councillor Forbes

Co-opted Members (non-voting)

2 Members of Hetton Town Council nominated by the Town Council

Councillor Hepple
Councillor Wilkinson

Chairman Councillor H. Trueman
Vice-Chairman Councillor Shattock

ANNEX

Draft Code of Conduct

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
 - 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 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.

Annex 1 to Code of Conduct

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.

Annex 2 to Code of Conduct

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

Annex 3 to Code of Conduct

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