

THE NEW STANDARDS REGIME

SUMMARY

- 1.1 At its meeting on 23 May 2012 Council considered a report on the new standards regime and made a number of decisions
- ❖ What Code of Conduct should be adopted
 - ❖ The make up of the new Standards Committee
 - ❖ The procedure for processing and considering complaints about breaches of the Code of Conduct.
- 1.2 There were however three main issues which could not be dealt with at that meeting;
- ❖ The new rules on members' interests that have to be registered and declared: Disclosable Pecuniary Interests (*see paras 4.1 to 4.19 & Appendix 2*)
 - ❖ The appointment of two Independent Persons and co-opted members to the Standards Committee (*see paras 4.20 to 4.27*)
 - ❖ Adoption of the final form of the new Code of Conduct including at parts 2 & 3 the new rules on Disclosable Interests (*Appendix 3*)
- 1.3 This report explains the new rules on disclosable pecuniary interests (DPIs) and, makes recommendations on the appointment to the Independent Persons and co-opted members posts.
- 1.4 In addition to reflect the new statutory rules on DPIs it is necessary to revise the Code of Conduct adopted at the Annual Council Meeting on 23 May. The revised version is attached at Appendix 3.

RECOMMENDATION

- 2.1 To authorise the Monitoring Officer to prepare and maintain a new register of Members interests.
- 2.2 To authorise the Monitoring Officer to ensure all members are properly trained and informed of the new requirements on declarable interests and their duty to register them.

- 2.3 To agree that the Council's Code of Conduct and Constitution should require members to declare a disclosable pecuniary interest at a meeting and withdraw from the meeting during consideration of the matter unless they have a dispensation. (See *paras 4.11 to 4.14*)
- 2.4 To adopt the revised Code of Conduct attached at Appendix 3 including the provision on declaring gifts and hospitality over £100 (*see paras 4.15 & 4.16*).
- 2.5 To authorise the Monitoring Officer to publish the Council's new Code of Conduct on the Council's website (*see para 4.3*).
- 2.6 To delegate to the Monitoring Officer the power to grant dispensations to allow members with a declarable interest to participate and vote on a matter but with a right of appeal to the Standards Committee (*see paras 4.19*)
- 2.7 To authorise the Monitoring Officer to make the necessary consequential changes to the Council's Constitution resulting from (recommendations 2.1 – 2.6).
- 2.8 To appoint Peter McCrea as an Independent Person on the Standards Committee for a term of 4 years (*see para 4.24*)
- 2.9 To give Cllrs Shelton, Barker and Jackson delegated authority to appoint, in consultation with Monitoring Officer, one further person as an Independent Person (*see para 4.26*)
- 2.10 To appoint Philip Sunderland and Peter Purnell as co-opted members of the Standards Committee for a term of 4 years (*see para 4.25*).
- 2.11 To thank Dionne Reid for her service as a co-opted member of the Council's former Standards Committee (*see para 4.27*)

REASONS FOR RECOMMENDATION

- 3.1 The requirements to adopt a Code of Conduct and have a register of Members' DPIs open for inspection are statutory ones under the Localism Act 2012
- 3.2 The requirement to appoint at least one Independent Person is also a statutory one. The proposal to appoint two co-opted members was a decision of Council on 23 May 2012 and is done to retain experience of former Independent Members.
- 3.3 The recommendation for members to declare DPIs at a meeting and then withdraw is to ensure transparency as is the recommendation to require members to declare gifts and hospitality.
- 3.4 The delegation to the Monitoring Officer to grant dispensations will avoid the need to postpone Committee meetings until one is obtained.

SUPPORTING INFORMATION

Disclosable Pecuniary Interests

- 4.1 As previously reported the Localism Act abolishes the concepts of personal and prejudicial interests and replaces them with the narrower concept “Disclosable Pecuniary Interests” (DPIs).
- 4.2 Statutory Regulations define what these DPIs are. In summary they cover a:
- ❖ Member’s ‘employment, office, trade, profession or vocation’
 - ❖ any ‘sponsorship’ of a member including contributions towards election expenses
 - ❖ trade union sponsorship
 - ❖ ‘contracts’ between the member and the authority
 - ❖ any land the member has an interest in within the authority’s area
 - ❖ any licences the member holds to occupy land in that area
 - ❖ any licences the Member holds to occupy land in that area
 - ❖ any corporate tenancies
 - ❖ certain share holdings and securities the Member may hold

The full list from the Regulations is attached at Appendix 2.

- 4.3 The new legislation introduces some significant changes from the old rules on members registering and declaring interests; under the new requirements;
- ❖ Disclosable and registerable interests include not only the interests of the member but also their spouse, civil partner or person they are living with as husband and wife.
 - ❖ Failure to declare or register a disclosable pecuniary interest without reasonable excuse will be a criminal offence.
 - ❖ There is no need for a member to declare an interest at a meeting or to withdraw while the matter is considered if it is registered. (*But see paras 4.11 – 4.14 of this report*)
 - ❖ The rules on when and who can grant a dispensation to allow a member with an interest to nonetheless participate and vote at a meeting have changed (*see paras 4.17 to 4.19*)
 - ❖ Removes the right of members with an interest to nonetheless make representations to a Committee where the public can (e.g. Planning Control)

Register of Members' Interests

- 4.4 The Monitoring Officer is required to set up and maintain a register of interests which must be open for public inspection and put on the Council's website.
- 4.5 Each elected or co-opted member must within 28 days of becoming a member register all of their DPIs. **Failure to do so will be a criminal offence.** However it will not prevent them acting as a member until prosecuted and disqualified.
- 4.6 There is no continuing requirement for a member to keep their entry in the Register up to date except on re-election (or re appointment for co-opted members). But if they don't they must disclose it at any relevant meeting and **failure to do so will be a criminal offence.**

Disclosing Sensitive Information

- 4.7 Where a member is concerned that disclosure of the detail of an interest of a meeting or on the register would lead to a member or person connected to him/her being subject to violence or intimidation he/she may request the Monitoring Officer to agree that the interest is a 'sensitive interest' and exclude it from the public version of the register.
- 4.8 If the Monitoring Officer agrees the member then merely has to disclose the existence of an interest rather than the detail of it at a meeting and the Monitoring Officer can to exclude the details from the public version of the register.

Participation or Voting with a DPI

4.9 When a member has a DPI he/she must not;

- ❖ Participate in any discussion of the matter at the meeting
- ❖ Vote on the matter

Failure to do so without reasonable excuse will be a criminal offense unless he/she has a dispensation (*see paras 4.17 & 4.18*)

4.10 This change means that the current practice of allowing members with a 'prejudicial' interest to nonetheless make representations, but not vote, on issues where the public can speak (e.g. Planning Control Committee) will cease.

Declare and Withdraw

4.11 In a fundamental change from the previous arrangements a member does **not**, under the provisions in the Act, have to declare a disclosable pecuniary interest at a meeting or withdraw during its consideration **if** he/she has already registered it or has already notified the Monitoring Officer of it ('Pending Notification')

4.12 However the Act does allow individual Councils to decide that they will nonetheless still require a member with a declarable interest to;

- ❖ Declare it
- ❖ Withdraw from the meeting

4.13 It is recommended that obligations to declare and withdraw should still be imposed under the Council's Code of Conduct and Constitution. However, because it is not a requirement under the Act, failure to declare and/or withdraw where a member has a declarable interest will not be a criminal offence but just a breach of the Code.

4.14 Where a Member does declare a DPI at a meeting that is not already registered, nor is the subject of a pending notification, then they must notify it to the Monitoring Officer within 28 days so it can be registered.

Gifts & Hospitality

4.15 There is under the new regime no requirement for Members to disclose any gifts or hospitality. However individual authorities do have the discretion to add to interests that are statutorily required to be discussed though failure to do so will only be a breach of the Code rather than a criminal offence.

4.16 It is nonetheless felt appropriate that there should be disclosure of such matters and the revised Code of Conduct, attached for approval at Appendix 3, includes a provision requiring disclosure of any gift or hospitality over £100

Dispensations

- 4.17 The previous standards regime allowed in two limited circumstances members with a declarable interest to nonetheless take part in the debate and voting on the matter by allowing a dispensation from the Standards Committee.
- 4.18 The Localism Act has made some significant changes to the dispensation provisions. In future one can be granted in the following circumstances;
- a) So many members of the decision making body have DPLs in a matter it would 'impede the transaction of business' (i.e. the committee etc would be inquorate)
 - b) That, without the dispensation, the representation of different political group on the Committee etc would be so upset as to alter the outcome of any vote on the matter. (This would be inappropriate to use at Committees that are meant to be non political such as Planning Control and Licensing).
 - c) That the authority concludes that the dispensation is in the interest of persons living in the area.
 - d) That without a dispensation no member of the Cabinet would be able to participate.
 - e) The authority considers it otherwise appropriate to grant a dispensation.
- 4.19 Previously only the Standards Committee could grant dispensations but in another change the Localism Act allows this power to be delegated to the Monitoring Officer. It is recommended that this power is delegated to the Monitoring Officer thus allowing dispensations to be granted 'at the door of the meeting' and thus avoid the postponement of meetings as has previously happened. There could, as a protective measure, be a right of appeal to the Standards Committee from the Monitoring Officers decision.

Appointment of Independent Persons

- 4.20 At its meeting on 23 May Council decided that membership of the Standards Committee should, from 1 July 2012, be
- ❖ Five elected members
 - ❖ Two Independent Persons
 - ❖ Two Co-opted Independent Members
- 4.21 This composition, while meeting the statutory requirements in the Localism Act, came as close as possible to replicating the make up of the Standards Committee under the old regime.

- 4.22 Council were able at the 23 May meeting to appoint the five elected members to the Standards Committee from 1 July 2012. They are Cllrs Barker, Jackson, Shanker and Tittley. However they were unable to appoint to the two Independent Persons as the Localism Act requires that;
- ❖ These positions must be re-advertised
 - ❖ Anyone interested must submit an application
 - ❖ Full Council must make the appointments
- 4.23 The posts have therefore been advertised in the 'This is Derbyshire' and on the Council's website and five applications were received. These were vetted by Cllr Barker, Cllr Jackson and Cllr Skelton, in consultation with the Monitoring Officer.
- 4.24 They have recommended that one Independent Persons posts be filled by Peter McCrea. He was previously a member of the former Standards Committee and bring a good deal of knowledge and understanding to the post even though the role has changed under the new arrangements.
- 4.25 Of the other two candidates it is recommended that Philip Sunderland and Peter Purnell be appointed to the co-opted member posts as they like Peter McCrea are members of the former Standards Committee and have even more experience. They have indicated that they are willing to continue in this role.
- 4.26 It was considered that further consideration needs to be given to filling the remaining Independent person post and it is recommended that delegated authority to make this appointment is given to Cllrs Jackson, Barker and Shelton in consultation with the Monitoring Officer.
- 4.27 One former Independent Member of the Standards Committee, Dionne Reid, is not seeking a continued role and it is recommended that Council thank her for the part she has played.

OTHER OPTIONS CONSIDERED

5. The decisions to require disclosure of interests at meetings and to require members to declare gifts and hospitality are discretionary but it is considered that to do so is good practice and increases public confidence.

For more information contact: Background papers: List of appendices:	Name Stuart Leslie 01332 643616 e-mail stuart.leslie@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Disclosable Pecuniary Interests Appendix 3 – Code of Conduct for Members and Co-opted Members
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IMPLICATIONS

Financial and Value for Money

- 1.1 None arising

Legal

- 2.1 Chapter 7 of the Localism Act 2012 (Sections 26 to 37) establishes the new statutory requirements on standards and these are set out in more detail in the body of the report.

Personnel

- 3.1 None directly arising

Equalities Impact

- 4.1 None directly arising

Health and Safety

- 5.1 None arising

Environmental Sustainability

- 6.1 None arising

Asset Management

- 7.1 None arising

Risk Management

- 8.1 None arising

Corporate objectives and priorities for change

- 9.1 Strong Community – Derby Plan

