

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Legal Services/Monitoring Officer

TO: Standards Committee

27/6/2012

WARDS: None directly affected

LOCALISM ACT 2011: NOTIFICATION AND DECLARATION OF MEMBERS' INTERESTS

1 INTRODUCTION

- 1.1 The Localism Act paved the way for fundamental changes to the registration and declaration of interests by councillors. From 1 July 2012, the current regime of “personal” and “prejudicial” interests is revoked.
- 1.2 From 1 July 2012, the only mandatory provision is for the registration and, in some cases, declaration of “disclosable pecuniary interests”. These were defined in a statutory instrument (“The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”) on 8 June. This has not allowed much time for preparation and briefing.
- 1.3 The changes in the regime are significant. Key points include:
 - Failure to notify or disclose a “disclosable pecuniary interest” is a criminal offence punishable by a fine and/or disqualification.
 - The definition of a “disclosable pecuniary interest” includes interests held by councillors and their “partner” – i.e. spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.
 - There is no longer a test of whether an interest is “prejudicial”. If a member has a “disclosable pecuniary interest” in a matter, they may not participate unless they obtain a dispensation. Members are likely to be precluded from participation in a wider range of matters than under the previous regime.

- 1.4 The proposed revised Code of Conduct for the City Council envisages wider declaration of interests in line with the requirements of the former model Code adopted by the Council.

2. RECOMMENDATIONS

- 2.1 That, pending the appointment of an “Independent Person”, the Monitoring Officer is authorised to determine applications for dispensations to speak and or vote from members with declarable pecuniary or other Code of Conduct interests, subject to the Monitoring Officer first consulting the Chair and Labour spokesperson for Civic Affairs.
- 2.2 That the Monitoring Officer shall consult the Independent Person, when appointed, before determining applications for dispensations, in place of the Chair and Labour Spokesperson for Civic Affairs.
- 2.3 That Civic Affairs Committee keeps this arrangement under review.

3. WHAT IS A DISCLOSABLE PECUNIARY INTEREST?

- 3.1 A ‘disclosable pecuniary interest’ is an interest of a councillor or their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they are civil partners) within the following descriptions, with “M” being a councillor and “relevant person” being either the councillor or their partner:

<i>Subject</i>	<i>Prescribed description</i>
<i>Employment, office, trade, profession or vocation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
<i>Sponsorship</i>	<i>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</i>

Relations (Consolidation) Act 1992.

<i>Contracts</i>	<i>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.</i>
<i>Land</i>	<i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Licences</i>	<i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i>
<i>Corporate tenancies</i>	<i>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.</i>
<i>Securities</i>	<i>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.</i>

4. WHAT OBLIGATIONS ARISE IF A MEMBER HAS A DISCLOSABLE PERSONAL INTEREST?

Registration

- 4.1 A member or co-opted member of the Council must, within 28 days of taking office, notify the monitoring officer of any disclosable pecuniary interests which they have and of any disclosable pecuniary interests, of which they are aware, that their partner has.
- 4.2 The Monitoring Officer is obliged to maintain a register of these interests. The register must be made available for public inspection and must be published on the Council's website.
- 4.3 There is no legal obligation to keep the register up to date and there are no transitional arrangements requiring current members to notify the Monitoring Officer of disclosable pecuniary interests.

Declaration

- 4.4 If a member (or co-opted member) is present at a meeting of the Council (or of a committee, subcommittee etc) and they have a disclosable pecuniary interest (of which they are aware) in any matter to be considered at the meeting, the following provisions apply.
- 4.5 If the disclosable pecuniary interest is entered in the register, the member does not need to declare it.
- 4.6 If the disclosable pecuniary interest is not entered in the register, the member must disclose it at the meeting and notify the Monitoring Officer of the interest within 28 days.
- 4.7 A member with a disclosable pecuniary interest may not participate in the discussion of the matter and may not vote. There is no longer a test as to whether the interest is "prejudicial". However, it may be possible to seek a dispensation to speak and/or to vote.

Sensitive interests

- 4.8 If a member has an interest the nature of which is such that the member and the Monitoring Officer consider that disclosure of the details could lead to a person being subject to violence or intimidation, details may be excluded from inspection and publication. At a meeting the member will not be required to disclose the interest but only the fact that they have an interest.

Dispensations

4.9 A member may be granted a dispensation to speak and/or vote if the Council:

- Considers that without a dispensation the number of persons prohibited from participating would be so greater proportion of the decision-making body as to impede the transaction of the business;
- Considers that without a dispensation the representation of different political groups on the body transacting the business would be so upset is to alter the likely outcome of any vote relating to the business;
- Considers that granting the dispensation is in the interests of persons living in the authority's area;
- Considers that, without the dispensation, each member of the Executive would be prohibited from participating in the business;
- Considers that it is otherwise appropriate to grant a dispensation.

4.10 Dispensations maybe granted for a specific period, which may not exceed four years.

4.11 A decision whether to grant a dispensation may be delegated to a committee, to a subcommittee or to an officer.

Criminal offences

4.12 If a member (or co-opted member) fails, without reasonable excuse, to comply with the registration or disclosure obligations, or participates or votes in contravention of these provisions, they may be liable to prosecution. Conviction is punishable by a fine not exceeding £5000. They may also be disqualified from holding office for a period of up to 5 years.

5. PRACTICAL ISSUES WITH THE NEW REGIME

5.1 It is difficult to see how the new regime is better than the previous regime and, in some respects, it is worse. The following points need to be noted and/or considered.

- 5.2 Members will note that, whilst there is mandatory registration and declaration of a more limited range of interests, the interests of partners now need to be declared and published. There is also now no statutory bar to participation and voting on matters which affect family members, other than partners, and which would, at present, be prejudicial interests.
- 5.3 The "Cambridgeshire Code of Contact" being recommended for adoption reintroduces the wider range of declarable interests. This will continue to promote transparency and will also capture a range of important interests that do not count as declarable pecuniary interests; e.g. an interest arising from a planning application submitted by a son or daughter.
- 5.4 The new regime does not make a distinction between interests that are registrable and declarable, but which do not bar participation and voting, and interests which are "prejudicial". In effect, all declarable pecuniary interests are treated as prejudicial, with participation and voting prohibited and, in fact, a criminal offence.
- 5.5 As explained in paragraphs 4.9 to 4.11, it is possible to seek a dispensation to speak and/or vote on a matter in which a member has a declarable pecuniary interest. Under the previous regime, applications for dispensations were the responsibility of the Standards Committee. It is now possible for the Council to delegate responsibility to a committee, to a sub-committee or to an officer. No applications for dispensations were made under the previous regime. However, given the abolition of the "prejudicial" test, and the close political balance on the Council, dispensations could well be sought frequently.
- 5.6 One difficulty with considering dispensations is that members may not appreciate that a meeting will be considering something in which they have a declarable pecuniary interest until shortly before the meeting. This could be achieved by delegating authority to the Monitoring Officer, in consultation with the Independent Person (when appointed) to grant dispensations. Pending the appointment of the Independent Person, it is recommended that the Monitoring Officer consults the Chair and Labour Spokesperson before determining an applications for a dispensation. This might be one area in which a quick fix is needed followed by more careful thought.
- 5.7 There is no legal requirement for someone with a "disclosable pecuniary interest" to leave the meeting when the matter in which they have an interest is considered. Nonetheless, the Monitoring

Officer suggests that this remains good practice and the proposed Code of Conduct preserves the provision under the previous Code requiring withdrawal.

5.8 There is also no requirement to keep the register of declarable pecuniary interests up to date. A requirement to update is only triggered after the initial registration (following election) if an interest is declared at a meeting. The proposed Code of Conduct goes further than the legal minimum in requiring members to keep their registration up to date throughout their term of office.

5.9 It will be necessary to provide briefing for all members to ensure that they are aware of their new responsibilities with regard to disclosable pecuniary interests.

5.10 **CONSULTATIONS**

The late publication of regulations defining disclosable pecuniary interests has not permitted consultation. There is a need to put arrangements into place without delay but it is possible to review and amend provisions with regard to members' interests.

6. **OPTIONS**

These are set out in the body of the report.

7. **IMPLICATIONS**

(a) **Financial Implications** None

(b) **Staffing Implications** None, although there will be some additional work for officers.

(c) **Equal Opportunities Implications** An equality impact assessment has not been conducted as there is unlikely to be a differential impact on groups with protected characteristics.

(d) **Environmental Implications.** Nil

(e) **Community Safety** Nil

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Localism Act 2011.

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

To inspect these documents contact Simon Pugh, Head of Legal Services and Monitoring Officer. Tel (01223) 457401, email simon.pugh@cambridge.gov.uk.

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