



AGENDA ITEM: 10

**STANDARDS COMMITTEE:
14 June 2012**

Report of: Managing Director (People and Places) and Borough Solicitor

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**SUBJECT: REGISTRATION AND DISCLOSURE OF INTERESTS AND
DISPENSATIONS**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To introduce provisions in relation to the registration and disclosure of interests and granting of dispensations as required by the Localism Act 2011 (the Act).

2.0 RECOMMENDATIONS

2.1 That the Managing Director (People and Places) (a) prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council's Code of Conduct, and ensure that it is available for inspection as required by the Act and that all members are informed of their duty to register interests; and (b) prepare and maintain new registers of members' interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council, ensure that it is available for inspection as required by the Act; and arrange to inform and train Parish Clerks on the new registration arrangements.

2.2 That the Managing Director (People and Places) prepare a Council Procedure Rule (effective from 1 July 2012) which equates to the current Code of Conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a Disclosable Pecuniary Interest (DPI), except where he is permitted to remain as a result of the grant of a dispensation.

2.3 That the power to grant dispensations be delegated to the Standards Committee.

3.0 THE LOCALISM ACT 2011

- 3.1 The Act makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes is 1 July 2012.
- 3.2 The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. The Council's Monitoring Officer is the Managing Director (People and Places).

4.0 THE REGISTER OF MEMBERS' INTERESTS

- 4.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which will also have to be open for inspection at the Council offices and on the Council's website.
- 4.2 At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.
- 4.3 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the Borough Council offices and on the Borough Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.
- 4.4 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member. In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but would be a failure to comply with the Code of Conduct.
- 4.5 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. In relation to 'new' DPIs these must be notified to the Monitoring Officer within 28 days of the Member becoming aware of it. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register. The preparation and operation of the register, not just for this

authority but also for each Parish Council, is likely to be a considerable administrative task, especially if different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the Borough Council to recover any costs from Parish Councils.

5.0 DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS

- 5.1 As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.
- 5.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, members of the public attending the meeting will in future need to read the register of members’ interests, as registered interests will no longer be disclosed at the meeting.
- 5.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests. If a member has a DPI in any matter, he/she must not –
- (a) Participate in any discussion of the matter at the meeting. The Act does not define “discussion”, but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - (b) Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

Failure to comply with the above requirements becomes a criminal offence, rather than leading to sanctions.

- 5.4 The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of the Code of Conduct not a criminal offence.
- 5.5 The requirement to withdraw from the meeting room can be covered by Council Procedure Rules, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee meetings. Failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

6.0 DISCLOSURE AND WITHDRAWAL IN RESPECT OF MATTERS TO BE DETERMINED BY A SINGLE MEMBER

- 6.1 Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers, or where the member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors.
- 6.2 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter, unless the DPI is already entered in the register of members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and he/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 6.3 Council Procedure Rules can provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter. The Act here effectively removes the current rights of a member with a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct.

7.0 SENSITIVE INTERESTS

- 7.1 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests. So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".
- 7.2 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 exclude the detail of the interest from the published version of the register of members' interests.

8.0 DISPENSATIONS

- 8.1 The provisions on dispensations are significantly changed by the Act. At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds –
- (a) That at least half of the members of a decision-making body have prejudicial interests (this ground maybe of little use as it is normally only at the meeting that it is realise how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and
 - (b) That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.
- 8.2 In future, a dispensation will be able to be granted in the following circumstances

- (a) That so many members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- (b) That, 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;
- (c) That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- (d) That, without a dispensation, no member of the Cabinet would be able to participate in the matter; or
- (e) That the authority considers that it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

8.3 The Local Government Act 2000 required that dispensations be granted by the Standards Committee, however the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer.

9.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

9.1 There are no significant sustainability impacts associated with this report and, in particular no significant impact on crime and disorder. The report has links to the Sustainable Community Strategy through its work with the Parish Councils.

10.0 FINANCIAL AND RESOURCE IMPLICATIONS

10.1 There is a small budget within Legal and Democracy to handle these matters which if it proves insufficient would require that funding be made available from contingencies. Introducing new arrangements of this nature is time consuming and substantial in-house resource will be required to work on this project. There will be a substantial amount of work arising in relation to Parishes the costs of which cannot be recovered.

11.0 RISK ASSESSMENT

11.1 The Council must put in place arrangements in order to comply with the requirements of the Act once relevant sections are brought into effect. Failure to do so or to adhere to suitable arrangements may expose the Council to the risk of judicial review proceedings or Ombudsman action. Any action taken in respect of Members would be proportionate in accordance with the requirements of the Human Rights Act 1998.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required

Localism Act 2011 The New Standards Regime 2012 Registration etc