

Standards Committee : 14 May 2012

Title of report: Code of Conduct Transitional Arrangements

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected and ward councillors consulted: All

Public or private: Public

1. Purpose of Report

The Localism Act 2011 provides for the abolition of the current standards regime including the national model code of conduct. The Department for Communities and Local Government (DCLG) has indicated that the abolition of the current system will take place on 1 July 2012, although the relevant statutory instrument has not yet been made. DCLG has suggested that consideration and determination of any outstanding complaints will be dealt with under the new arrangements for standards adopted by individual local authorities. It is anticipated that Council will be considering the form of its new code of conduct and the rest of its new arrangements at a meeting on 4 July 2012.

The purpose of this report is for the Standards Committee to consider what arrangements should be made for a code of conduct to cover the interval between the abolition of the current standards regime and the introduction of the Council's new code of conduct, and to make the appropriate recommendation to Council for consideration at its annual meeting on 23 May 2012. Although the interval may only last for a matter of days it is important that a code of conduct consistent with the new standards regime is in place for that period. Without transitional arrangements the Council would be left with the current code of conduct, which would not be consistent with the new statutory regime during that intervening period especially with regard to the registration and declaration of disclosable pecuniary interests.

2. Key Points

The Localism Act 2012 requires local authorities to adopt new codes of conduct consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Any new code must deal with the registration and disclosure of pecuniary and other interests. The Act also makes provision for “disclosable pecuniary interests” to be registered and disclosed and creates various criminal offences relating to failure to comply with the rules on registration and disclosure. To date the statutory instrument defining “disclosable pecuniary interests” has not been made and it is therefore difficult to draft any provisions for a code of conduct dealing with either “disclosable pecuniary interests” or “other interests”.

To overcome this difficulty it is suggested that the current Kirklees Council Code of Conduct remain in force during any transitional period, with the exception of the provisions dealing with prejudicial interests, with revised provisions based upon the DCLG illustrative text for codes of conduct relating to interests and with other amendments to make it consistent with the new standards regime and other changes in legislation. The DCLG illustrative text forms Annex A to this report and the proposed transitional code of conduct forms Annex B.

The approach taken to drafting the proposed transitional code of conduct is as follows:

- To retain as much of the current code of conduct as is consistent with what is known of the proposed new statutory regime. This is done so as to minimise any confusion during the transition from the current code of conduct, which has been in place since 2008 and with which members are familiar, to the new arrangements under the Localism Act 2011. In particular the existing provisions upon “personal interests” are retained. All the provisions in the current code of conduct which do not relate to interests have also been retained subject to amendments to keep them consistent with the new standards regime.
- The provisions relating to prejudicial interests have been replaced with the wording upon disclosable pecuniary interests from the DCLG illustrative text. By the time any transitional code comes into effect a statutory instrument defining a disclosable pecuniary interest should be in effect. It seems unlikely that there will be any overlap between the definitions of the new disclosable pecuniary interests and the current personal interests, but if there is any conflict the rules on disclosable pecuniary interests will prevail as they will be set out in legislation.

The parts of the proposed transitional code of conduct which differ from the current code of conduct are in italic text.

Under the new standards regimes parish councils have the option of adopting the code of conduct of their principal authority, ie local parish councils could adopt any new code of conduct adopted by Kirklees Council. If they were minded to do so the issue of transitional arrangements would also arise for the individual parish councils, who might also wish to adopt any transitional code of conduct adopted by Kirklees Council.

3 Implications for the Council

The promotion and maintenance of high standards of conduct among councillors and voting co-opted members is an important part of maintaining public confidence in the council and its members. It is therefore important that the Council has a code of conduct in place which is consistent with the statutory regime at all times.

4 Consultees and their opinions

N/a

5 Officer recommendations and reasons

It is recommended that:

Standards Committee recommend to Council that in the event that the provisions of the Localism Act 2011 which relate to the abolition of the current standards regime are brought into force on 1 July 2012, Council adopt the proposed transitional code of conduct set out at Annex B to cover any interval between the abolition of the current standards regime and the adoption of new arrangements by the Council.

6 Cabinet portfolio holder recommendation

N/a

7 Next steps

The matter be considered by Council.

8 Contact officer and relevant papers

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Background Papers:

Copy letter dated 22 December 2011 from the Department for Communities and Local Government to the Association of Council Secretaries and Solicitors

ANNEX A

Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member - You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or

non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation

ANNEX B

Proposed Transitional Code of Conduct

CODE OF CONDUCT FOR COUNCILLORS (AND VOTING CO-OPTÉES)

General provisions

Introduction and interpretation

- 1.** – (1) This Code applies to **you** as a member of an authority.
(2) You should read this Code together with the general principles prescribed by the Secretary of State, set out in the appendix to this Code.
(3) It is your responsibility to comply with the provisions of this Code.
(4) In this Code –

“meeting” means any meeting of:-

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or area committees;

“member” includes a co-opted member and an appointed member.

Scope

- 2.** – (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever *you act in the capacity of an elected or co-opted member of the authority*
- (2) Where you act as a representative of your authority –
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

- 3.** – (1) You must treat others with respect.
- (2) You must not –
- (a) do anything which may cause your authority to *breach any of its responsibilities under the Equality Act 2010*;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is likely to be–
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority’s code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or in behalf of, you authority.,

4. You must not-

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purposes of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is-

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You –

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority –

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986(a).

7. – (1) When reaching decisions on any matters you must have regard to any relevant advice provide to you by –

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interest

8. – (1) You have a personal interest in any business of your authority where either –

(a) it relates to or is likely to affect –

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body –

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) 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;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision

(2) In sub-paragraph (1) (b), a relevant person is-

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. – (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest,

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not to disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Disclosable Pecuniary Interests Generally

10 –(1) *You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.*

(2) If an interest has not been entered onto the authority's register, then you must disclose the interest to any meeting of the authority at which you are present, where you have a disclosable interest in any matter being considered and where the matter does not relate to 'sensitive information' as defined below.

(3) Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

(4) Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a disclosable pecuniary interest.

Sensitive information

11. – (1) *Where you consider that the information relating to any of your interests is sensitive information, and your authority’s monitoring officer agrees, you need not include that information when registering that interest under paragraph 10.*

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.