

Committee: STANDARDS

Agenda Item

Date: 12 March 2012

4

**Title: STANDARDS AFTER THE LOCALISM ACT
2011**

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Item for decision

Summary

1. This report is to present to members a final draft version of the Code of Conduct for consideration and to inform members of the decisions of the Constitution Working Group.

Recommendations

2. That the Committee delegate authority to the Assistant Chief Executive – Legal to amend the draft Code of Conduct to take account of the provisions of any primary or subordinate legislation enacted after the date of the meeting
3. Subject thereto that the Committee recommend a draft Code of Conduct with or without amendments to Full Council for approval and adoption to be effective from the 1 July 2012 or such other date as may be appointed by the Secretary of State for the provisions of section 27 Localism Act 2011 to come into force.

Financial Implications

4. None arising from this report:

Background Papers

5. None.

Impact

- 6.

Communication/Consultation	The draft Code of Conduct has been circulated to all town and parish councils for comment. Although town and parish councils are not bound by this council's Code of Conduct the legislation permits parish councils to adopt the same without complying with the duties under section 28(1) of the Act to secure the Code is compliant with the Nolan principles and s.28(2) to make provision for the
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	registration and declarations of interests. The feedback to date has been positive but very limited.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	The Committee has already demonstrated compliance with section 28(1) of the Act and the draft Code complies with section 28(2).
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

7. At its meeting on the 9 January 2012 this Committee considered and approved general principles of the Code of Conduct. It also gave guidance as to what should be contained in the Code regarding registration and declarations of interests.
8. Appended to this report at Appendix A is a final version of the draft Code for consideration by members. This (like the existing Code) is divided into three sections namely the General Provisions, Members' Interests and Registration of Interests.
9. The general provisions are as approved by this Committee on the 9 January save that I have included a paragraph under Part I, paragraph 1 to show that the council has fulfilled its duty under section 28(1) of the Act. I have also inserted a definition of the word 'meeting' as this is now relevant in the context of members' interests. This definition is taken from the existing code.
10. The provisions regarding members' interests have been divided into three parts. The first part deals with disclosable pecuniary interests. This part is incomplete as it will need to reflect secondary legislation once this has been laid before Parliament.
11. The second category is other pecuniary interests. This is likely to require significant amendment once the secondary legislation has been laid before Parliament as it is almost inevitable some of these interests will fall within the definition of disclose pecuniary interests.

12. The final category of interests is those non-pecuniary interests which are currently listed as being personal interests but which on the face of it would not affect a member's financial position.
13. I have carried forward the provisions of the existing Code which would have required a declaration of interests (but not registration) in respect of 'relevant persons' and I have also incorporated the same definition as applies at present. I have however made one alteration in paragraph 7.5 to correct what appears to me to be a drafting error when the legislation relating to the current Code was drafted.
14. The Localism Act contains provisions for the registration and declaration of disclosable pecuniary interests. The Act also however makes provision for the Code of Conduct to deal with the registration and disclosure of pecuniary and non-pecuniary interests. These matters are entirely for the Council's discretion. The legislation for disclosable pecuniary interests only requires registration of these upon election or appointment to the Council and upon re-election or re-appointment. The legislation does not require these interests to be declared unless the interest does not appear on the members' register of interests and a matter relating to the interest comes under consideration at a meeting at which the member is present. In accordance with the views expressed by members at the last meeting I have brought forward provisions from our existing Code of Conduct which require the register to be kept up to date notwithstanding the statutory provisions relating to disclosable pecuniary interests and also which require interests to be declared at all meetings of the council.
15. With regard to disclosable pecuniary interests there is no scope whatsoever for taking part in meetings where such interest arise. However, for other pecuniary interests I have retained the right of members to speak before withdrawing from the room. In this respect members will note my comments at paragraph 9.4 and 9.5 of the draft Code.
16. Finally, I have added an appendix to the Code of Conduct which merely sets out the Nolan principles. This appears appropriate bearing in mind the duty to ensure that as a whole the Code complies with those principles.
17. At the meeting on the 9 January members also considered the proposed constitutional amendments. These have been agreed by the Constitution Working Group and will be recommended to Full Council. These include the recommendation of a standing order that members with disclosable pecuniary interests should be required to withdraw from the chamber when the matter relating to that interest is under consideration. (Under the Act this is matter for standing orders and not for the Code of Conduct).
18. This Committee also approved revised procedures for dealing with allegations of breaches of the Code of Conduct. Those procedures were adopted by the Constitution Working Group with one exception. Members will recall that at my suggestion they approved an amendment to the procedures whereby the investigating officer was no longer to make findings of fact or to draw a conclusion as to whether or not there had been a breach of the Code of

Conduct. My view as to the appropriateness of that course was based upon the Localism Bill and what was likely to flow therefrom. Unfortunately, the Act does not reflect what was expected. In particular there will be no independent chairman of the Standards Committee, no independent voting members of the Standards Committee and there is a risk that a Standards Committee would need to be politically balanced. At meetings of the Public Law Partnership it also became apparent to me that all other authorities in the partnership (that is all local authorities in Essex, Hertfordshire County Council, Suffolk Country Council and some district councils from those counties) are retaining the requirement for the investigating officer to make findings of fact and to express a view as to whether those facts constitute a breach of the Code of Conduct. The view of members of the Constitution Working Group was that this is its preferred method of operation and the Constitution Working Group unanimously proposed that in that respect the status quo should continue. Otherwise the procedure for dealing with complaints was approved.

19. The Constitution Working Group expressed its regret that existing independent members of the Standards Committee would not be eligible for appointment as independent persons under the new regime and recommended that the Council should embark upon a recruitment process to make suitable appointments as soon as possible.

Risk Analysis

20.

Risk	Likelihood	Impact	Mitigating actions
The council does not have a Code of Conduct in place to meet its duties under the Localism Act 2011.	1, the majority of the work has now been done in good time and the Code now merely requires approval.	3, the council would suffer reputational damage if it did not have a Code of Conduct and was unable to deal with allegations of misconduct by members.	None required.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX A

THE COUNCILLORS' CODE OF CONDUCT

Part 1

General Provisions

1. Introduction and Interpretation

This is the code of the conduct expected of members of Uttlesford District Council adopted under s.27 (2) Localism Act 2011. Uttlesford District Council considers that this code viewed as a whole is consistent with the principles contained in s.28 (1) of that Act which are set out in the Appendix to this Code.

This Code applies to **you** as a member of your authority. It is your responsibility to comply with the provisions of this Code.

In this Code the word "meeting" means any meeting of your authority or of the cabinet or of any committee or sub-committee of your authority or of any joint committees, joint sub-committees, area forums, task groups or working groups.

2. Scope

Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you conduct the business of your authority (which includes the business of the office to which you are elected or appointed) or act, claim to act or give the impression you are acting as a representative of your authority.

3. General Obligations

3.1. You must treat others with respect.

3.2. You must observe any protocols or codes of practice adopted by your authority.

3.3. You must not:

- 3.3.1. do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
- 3.3.2. bully any person;
- 3.3.3. intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or 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;
- 3.3.4. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- 3.3.5. 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:
 - 3.3.5.1. you have the consent of a person authorised to give it;
 - 3.3.5.2. you are required by law to do so;
 - 3.3.5.3. 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
 - 3.3.5.4. the disclosure is reasonable and in the public interest; and is made in good faith and in compliance with the reasonable requirements of the authority;
- 3.3.6. prevent another person from gaining access to information to which that person is entitled by law.
- 3.3.7. conduct yourself in a manner which could be reasonably regarded as bringing your authority or your office into disrepute
- 3.3.8. 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
- 3.4. You must, when using or authorising the use by others of the resources of your authority:

- 3.4.1. act in accordance with your authority's reasonable requirements;
- 3.4.2. ensure that such resources are not used improperly for political purposes (including party political purposes); and
- 3.4.3. have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Part 2

Members Interests

4. Disclosable Pecuniary Interests

4.1. You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 4.2 below and either is:-

- 4.1.1. an interest of yours
- 4.1.2. an interest of your spouse
- 4.1.3. an interest of your civil partner
- 4.1.4. an interest of a person you are living with as a spouse or civil partner

and in the case of paragraphs 4.1.2 – 4.1.3 you are aware that that other person has the interest

4.2. "Disclosable pecuniary interests" are defined by the *[Insert details of the S.I. when known]* and are:-

- 4.2.1.

5. Other Pecuniary Interests

You have a pecuniary interest in any business of your authority where either:-

5.1 it relates to or is likely to affect:-

- 5.1.1. any employment or business carried on by you
- 5.1.2. any person or body who employs or has appointed you
- 5.1.3. 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

£25,000.00 or one percent of the total issued share capital (whichever is the lower)

5.1.4. 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 a description referred to in paragraph 5.1.3

5.1.5. any land in your local authority's area in which you have a beneficial interest

5.1.6. 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 a description referred to in paragraph 5.1.3 is the tenant

5.1.7. 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

5.2. a decision in relation to that business might reasonably be regarded as affecting your financial position or the financial position of a relevant person to a greater extent than the majority of:-

5.2.1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

5.2.2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

6. Non-Pecuniary Interests

You have a non-pecuniary interest in any business of your authority where either:-

6.1. it relates to or is likely to affect:-

6.1.1. 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

6.1.2. any body:-

6.1.2.1. exercising functions of a public nature;

6.1.2.2. directed towards charitable purposes; or

6.1.2.3. 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

6.1.3. The interests of any person or body, other than a relevant authority, who has made a payment to you or on your behalf in respect of your election or any expenses incurred by you in carrying out your duties

6.1.4. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25

or

6.2.a decision in relation to that business might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-

6.2.1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

6.2.2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

7. "Relevant Persons"

For the purposes of paragraphs 5.2 and 6.2 "relevant person" means:-

7.1. a member of your family or any person with whom you have a close association

7.2. any person who employs or has appointed such persons, any firm in which they are a partner or any company of which they are directors

7.3. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.00 or

7.4. any body of which such persons are a member or in a position of general control or management and to which you are appointed or nominated by your authority

7.5. any body of a type described in paragraph 6.1.2 of which such persons are members or in a position of general control or management [*Note – as drafted*

the current code of conduct refers to bodies in the equivalent of paras 6.1.1 and 6.1.2 above. I think this was a drafting error by the parliamentary draftsman. There is no need for the bodies in para 6 to be relevant persons as any interest in them is registerable and declarable by virtue of other provisions of the Code. I think therefore this was intended to relate to such bodies where relevant persons were members of them.]

8. Disclosure of Interests

- 8.1. Subject to paragraph 8.2 where you have a disclosable pecuniary interest, any other pecuniary interest or a non-pecuniary interest in any business of your authority and you are present at a meeting of your authority at which the business is considered you must disclose to that meeting the existence and the nature of the interest if you are aware or ought reasonably to be aware of it.
- 8.2. Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 8.1 but by virtue of paragraph 12 (sensitive interests) details of the interest are not registered in your authority's published register of members' interests you must disclose to the meeting the fact that you have an interest and that the interest is a disclosable pecuniary interest (if that is the case) but need not disclose the nature of the interest to the meeting
- 8.3. Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 8.1 and you have made 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 and for the purposes of this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under s.22 Local Government Act 2000

9. Effect of interests upon participation in meetings

- 9.1. If you have a disclosable pecuniary interest in any business of your authority and are present at a meeting of the authority at which such business is to be considered or is being considered you must:-

- 9.1.1. disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2)
- 9.1.2. unless you have obtained a dispensation from your authority:-
 - 9.1.2.1. withdraw from the room or chamber where the meeting considering the business is being held
 - 9.1.2.2. not participate or participate further in any discussion of the matter at the meeting
 - 9.1.2.3. not participate in any vote or further vote taken on the matter at the meeting
- 9.2. if a function of your authority may be discharged by a member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by yourself)
- 9.3. If you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-
 - 9.3.1. disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2)
 - 9.3.2. unless you have obtained a dispensation from your authority:-
 - 9.3.2.1. withdraw from the room or chamber where the meeting considering the business is being held in a case where paragraph 9.4 applies immediately after making your representations or in any other case when the business is under consideration
 - 9.3.2.2. not participate in any vote or further vote taken on the matter at the meeting
- 9.4. Where you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority you may attend a meeting for the purpose of making representations only [*Note – I have omitted the words from the current code “giving evidence or answering questions” as I have also omitted the provisions providing that members have a “prejudicial interest” in*

the scrutiny of decisions which they have taken. We will need to give consideration as to whether we should incorporate such provisions but my view is that we should not]

9.5. *[Note – are we satisfied that planning and other regulatory matters (e.g. licensing) are adequately covered by matters which affect the financial wellbeing and general wellbeing or do we want to spell this out in more detail bearing in mind that these were not referred to in the original Code, only in the revision which limited the extent of prejudicial interests?]*

Part 3

Registration of Members Interests

10. Disclosable Pecuniary Interests

10.1. Under the Localism Act 2011:-

10.1.1. you are required to notify your authority's monitoring officer of any disclosable pecuniary interests as referred to in paragraph 4 which you have at the time notification is given before the end of 28 days beginning with the day on which you become a member or co-opted member of the authority.

10.1.2. you are also to notify your authority's monitoring officer of any disclosable pecuniary interest as referred to in paragraph 4 which is not entered in your authority's register of interests and is not subject of a pending notification before the end of 28 days beginning from the date of disclosure of that interest at a meeting of your authority

10.1.3. if a function of your authority may be discharged by a member acting alone and you are exercising such a function you are also required to notify your authority's monitoring officer of any disclosable pecuniary interest as referred to in paragraph 4 which is not entered in your authority's register of interests and is not subject of a pending notification before the end of 28 days beginning from the date you become aware that you have a disclosable pecuniary interest relating to the matter being

to be dealt with or being dealt with in the course of discharging that function

10.2. Notifications of disclosable pecuniary interests to the monitoring officer under paragraph 10.1 shall be in writing

10.3. Notwithstanding the provisions of the Localism Act 2011:-

10.3.1. before the end of 28 days beginning from the date upon which this Code takes effect or within 28 days of your election or appointment to office (whichever is later) you must register in your authority's Register of Members' Interests maintained under s.29 Localism Act 2011 your disclosable pecuniary interests as referred to in paragraph 4

10.3.2. you must within 28 days of becoming aware of any new disclosable pecuniary interest or change to any disclosable pecuniary interest registered under paragraph 10.1 or paragraph 10.2 register details of that new disclosable pecuniary interest or change by providing written notification to your authority's monitoring officer

11. Other Pecuniary Interests and Non-Pecuniary Interests

11.1. Before the end of 28 days beginning from the date upon which this Code takes effect or within 28 days of your election or appointment to office (whichever is later) you must register in your authority's Register of Members' Interests maintained under s.29 Localism Act 2011 your pecuniary interests of a description referred to in paragraph 5.1 and your non-pecuniary interests of a description referred to in paragraph 6.1 by providing written notification to your authority's monitoring officer

11.2. You must within 28 days of becoming aware of any new interest registerable under paragraph 11.1 or change to any interest registered under that paragraph register details of that new interest or change by providing written notification to your authority's monitoring officer

12. Sensitive interests

Where you have an interest registerable under paragraphs 10.1, 10.2, 10.4 or 11.1 and the nature of the interest is such that you and your authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person

connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register shall not include details of the interest but may state that you have an interest details of which are withheld under s.32(2) Localism Act 2011 and/or this paragraph

APPENDIX

THE PRINCIPALS CONTAINED IN s.28 (1) LOCALISM ACT 2011

1. Selflessness
2. Integrity
3. Objectivity
4. Accountability
5. Openness
6. Honesty
7. Leadership