

CODE OF CONDUCT AND MEMBERS' INTERESTS

EXECUTIVE MEMBER: Councillor Elaine Woodburn
LEAD OFFICER & REPORT AUTHOR Tim Capper, Democratic Services Manager and Monitoring Officer

Why has this report come to the Audit and Governance Committee?

At the last meeting of the Committee on 20 June Members noted the new responsibilities of the Committee agreed by Council on 14 June for overseeing the Code of Conduct for Members and associated matters following the disestablishment of the Standards Committee on 1 July, and the additional terms of reference to reflect these new responsibilities. This report sets out further proposals for recommendation to Council, including additional categories of members' interests to be included in the Council's Code of Conduct, in addition to those prescribed statutorily as Disclosable Pecuniary Interests.

Recommendations:

The Audit and Governance Committee are recommended to:

- (a) Recommend to Council that the additional categories of interests set out in paragraph 2.1 are included in the Council's Code of Conduct;
- (b) Recommend to Council that all Member with interests with Disclosable Pecuniary Interests or other interests in business to be transacted at a meeting should declare those interests at the start of the meeting or as soon as they become aware of them, irrespective of whether those interests have already been registered;

(c) Recommend to Council that the requirement for a Member with a Disclosable Pecuniary Interest to leave the room during the discussion of the business in which he/she has the interest, and the amendment of the Council Procedure Rules giving effect to this is, are approved;

(d) Note the position on declaration of other interests;

(e) Recommend to Council that the sanctions set out in para 5.2 are agreed as those that will be available to hearings when an allegation that a Member has breached the Code of Conduct is proven; and

(f) Recommend to Council that the Code of Conduct and associated protocols are subject of a full review in 6 months.

1 Introduction

1.1 The report to the last meeting set out the position on adoption of a new Code of Conduct under Sections 26-37 of the Localism Act 2011, which requires all local authorities to adopt a Code based on the 7 Nolan principles of conduct in public life.

1.2 The Council at its meeting on 14 June adopted a Code of Conduct based on the model drawn up by the Cumbria Monitoring Officer Network which is being recommended to all authorities in Cumbria, including parishes and the National Park Authority with the aim of achieving consistency of approach across the County. The Council also adopted as part of the Code, which it is required to do, the seven categories of Disclosable Pecuniary Interests (DPI's) which are prescribed in regulations and which Members are required by law to register in the Council's Register of Members' Interests and in certain circumstances declare in meetings. The Code as adopted with the seven DPI categories is attached for ease of reference at Appendix "A".

2 Other Non DPI Interests

2.1 The Council has a discretion to include in its Code other categories of interests which it requires Members to register. The Monitoring Officer Network are recommending that authorities should include the following categories of interests in their Codes, again with a view to consistency across the County:

- (a) Details of any body of which a Councillor is a member or in a position of general control or management and to which the member is appointed or nominated by the Council;
- (b) Details of any body of which a Councillor is a member or in a position of general control or management and which –

- (i) exercises functions of a public nature,
 - (ii) is directed to charitable purposes or
 - (iii) is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade union;
- (c) Details of any persons from whom a Councillor has received gifts or hospitality with an estimated value of at least £50 received by the Councillor personally in connection with his/her duties.

2.2 The Committee is asked to recommend to Council that these categories of interest are included in the Council's Code of Conduct.

3 Declaration and Non Participation in Cases of DPI's

3.1 If a Councillor is present at a meeting of the Council, Cabinet or any committee, sub-committee, joint committee or joint sub-committee of the authority, and has a disclosable pecuniary interest in any matter to be considered or being considered at the meeting:

- The member may not participate in any discussion of the matter at the meeting.
- The member may not participate in any vote taken on the matter at the meeting.
- If the interest is not registered, the member must disclose the interest to the meeting.
- If the interest is not registered and is not the subject of a pending notification, the member must notify the Monitoring Officer of the interest within 28 days.

3.2 Paragraph 3.1 above sets out the basic requirements for registration and declaration of DPI's. Cumbrian Monitoring Officers are recommending Members to go further than the basic statutory requirements in two respects, however, in order to ensure that decision-making processes are clear and transparent, and to ensure that the position of members is protected.

3.3 For these reasons, and in the interests of clarity and transparency, and to avoid potential for uncertainty, Cumbrian Monitoring Officers are recommending Members of authorities in the County to both declare DPI's at the start of meetings in which they arise, and to leave the room during discussion and voting on matters in which they have DPI's. If the Committee is minded to agree with this recommendation, it will be necessary to recommend Council to make the necessary amendment to the Council Procedure Rules in the Constitution. A proposed addition to the Rules which makes appropriate provision is attached at Appendix "B".

4 Declaration of Other Registrable Interests and Non Registrable Interests

4.1 The Code of Conduct requires members to declare other registrable interests when they arise, and these will comprise the additional non DPI interests set out in paragraph 2 above if the Committee is minded so to recommend to Council.

4.2 As under the previous ethical governance regime, there will also be occasions when Members will need to declare other interests in meetings. This will arise when a Member has an interest in any matter as a result of that matter affecting the well-being or financial position of the Member, the Member's family or close associates, more than it would affect the majority of other people in the ward affected by the decision. Failure to declare interests in these circumstances might result in a decision being challenged on the grounds that a Member taking part in decision-taking had done so from a position of bias. This was the position under the old Code of Conduct and remains so now. The proposed Guidance for Members on Registration and Declarations of Interests which appears as a separate item on the agenda for this meeting includes detailed guidance on different types of bias and on actions Members should take to avoid accusations of bias.

4.3 The Committee is asked to note the position on declaration of other registrable and non-registrable interests.

5 Sanctions

5.1 Council at its meeting on 14 June approved the detailed arrangements as required by the Section 28 of the Localism Act for how allegations of non-compliance with the Code of Conduct (other than DPI's, breaches of which will be dealt with as criminal offences) will be dealt with.

5.2 The Council also needs to formally agree what sanctions will be available for use when an allegation of non-compliance with the Code is investigated and proven under the arrangements agreed on 14 June. The Council no longer has any powers to impose sanctions such as suspension or requiring a Member to undertake training or participate in mediation. Neither can the Council take any action which impedes in any way a Member's ability to properly discharge their duties as a Councillor. The sanctions available appear therefore to be limited to the following:

- (i) Censuring or reprimanding the Member;
- (ii) Reporting the finding to Council (*or recommend the relevant Parish Council to do so*);
- (iii) Recommending to the Member's Group Leader (or in the case of ungrouped Members, recommend to Council) that he/she is removed from any or all Committee/Panel membership;
- (iv) In the case of an Executive Member, recommend to the Leader that the Member be removed from Executive membership, or from particular Portfolio responsibilities;

(v) In the case of the Leader, recommend to Council that the Leader be replaced as Leader of the Council by resolution;

(vi) Instruct the Monitoring Officer to *(or recommend that the Parish Council)* arrange training for the Member;

(vii) Recommending to Council *(or to the Parish Council)* that the Member be removed from any or all outside bodies on which he/she represents the Council;

(viii) Withdrawing *(or recommend to the Parish Council that it withdraws)* facilities provided to the Member by the Council, such as a computer, access to website and/or e-mail

(ix) Excluding *(or recommending to the Parish Council that it excludes)* the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council and Committee meetings.

5.3 There is a particular potential difficulty with Parish Councils, as the Localism Act gives principal authorities no powers to do any more than make a recommendation to a Parish Council on action to be taken in respect of a member. Parish Councils will be under no obligation to accept any such recommendation.

5.4 The Audit and Governance Committee is asked to recommend Council to agree that the sanctions set out in 5.2 above will be those available to hearings set up under the arrangements agreed by Council on 14 June.

6 Review

6.1 The Committee is asked to recommend to Council that the Code of Conduct adopted on 14 June and all associated protocols and arrangements, including those in this report, are reviewed in 6 months time to ensure they are effective and fit for purpose.

7 Conclusion

7.1 This report, together with others on the agenda for this meeting, together with those agreed by Council on 14 June, complete the framework of measures the Council is required to have in place by the Localism Act 2011 concerning the regulation of the conduct of members.

Consultees: Leader; Chair of Audit and Governance Committee; Chief Executive; Section 151 Officer

Monitoring Officer comments: Included in report

S151 Officer comments: No comments as all of the related activity for this area of work is included within existing budgets so there are no financial implications arising from this report

EIA comments: No groups are advantageously or disadvantageously affected by the proposals in the report.

Appendices

Appendix "A" – Code of Conduct

Appendix "B" - Council Procedure Rules

CODE OF CONDUCT

FOR MEMBERS AND CO-OPTED MEMBERS OF THE AUTHORITY

1. The Copeland Borough Council ("The Authority") has adopted the following code dealing with the conduct that is expected of members and co-opted members of the Authority ("Members") when they are acting in that capacity as required by section 27 of the Localism Act 2011 ("the Act").
2. The Authority has a statutory duty under the Act to promote and maintain high standards of conduct by Members and the Code sets out the standards that the Authority expects Members to observe.
3. The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. It is the responsibility of individual Members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time. Failure to do so may result in a sanction being applied by the Authority. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years.
4. The code is intended to be consistent with the seven principles as attached to this code and applies whenever a person is acting in his/her capacity as a Member of the Authority or co-opted member in the conduct of the Authority's business or acting as a representative of the Authority.
5. When acting in your capacity as a Member
 - (1) 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, a close associate, an employer or a business carried on by you.
 - (2) You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your official duties.
 - (3) You must not disclose any information given to you as a Member in breach of any confidence.
 - (4) You must not bring your office or your Authority into disrepute.
 - (5) You must treat others with respect and promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the authority's statutory officers and its other employees.
 - (6) 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.

- (7) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- (8) 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.
- (9) You must declare any private interests, both disclosable pecuniary interests and any other registrable interests, 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 which conforms with the procedures set out below.
- (10) You must ensure, when using or authorising the use by others of the resources of your authority, 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.
- (11) You must promote and support high standards of conduct when serving in your office.

Registering and declaring disclosable pecuniary and other registrable interests

- (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) 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.
- (3) 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' as described by the Localism Act 2011.
- (4) 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.
- (5) 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.

SEVEN GENERAL PRINCIPLES OF CONDUCT

Selflessness

1. Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

2. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

3. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

Accountability

4. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

5. Holders of public office should be as open as possible about the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

Honesty

6. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

Leadership

7. Holders of public office should promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence.

DISCLOSABLE PECUNIARY INTERESTS (as defined by regulations)

- 1. Details of any employment, office, trade, profession or vocation carried on for profit or gain.**
- 2. Details of 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 Relations (Consolidation) Act 1992.**
- 3. Details of 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.**
- 4. Details of any beneficial interest in land which is within the area of the relevant authority.**
- 5. Details of any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.**
- 6. Details of 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.**
- 7. Details of 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 that 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.**

COUNCIL PROCEDURE RULES

1 That an additional Council Procedure Rule be added as Rule 23 as follows:

“Where a Member has a Disclosable Pecuniary Interest as defined by Regulations under the Localism Act 2011 in an item of business at a meeting, the Member is required to leave the room where the meeting is being held during discussion and voting on the item in which the Member has a Disclosable Pecuniary Interest.

This Council Procedure Rule will also apply to all meetings of the Executive, Committees, Panels, Working Parties and Task and Finish Groups.”