

**TO: COUNCIL
29 NOVEMBER 2017**

**AFFECTED INTERESTS AND RELATED MATTERS
Director of Resources – Legal**

1 PURPOSE OF REPORT

- 1.1 To amend provisions relating to Affected Interests in the Council's Code of Conduct for Members following recommendations of the Code of Conduct Working Group which convened on 27 June 2017.

2 RECOMMENDATION

- 2.1 **That the Council adopt the recommendations of the Code of Conduct Working Group set out in Paragraph 5.16 below and the Appendix to this report.**

3 REASONS FOR RECOMMENDATION

- 3.1 There exists a level of uncertainty amongst some Members as to the scope and effectiveness of provisions relating to Affected Interests in the Council's Code of Conduct. The provisions were incorporated in the current Code in 2012 at the behest of a member working group which had been set up to develop a new Code under the Localism Act. It was considered at the time that the adoption of Affected Interests and the registration and disclosure provisions imposed in respect of such interests would enhance the scope of the ethical standards framework beyond that which the law required with Disclosable Pecuniary Interests.
- 3.2 The Code of Conduct Member Working Group has recently reviewed the provisions of the Code and agreed to some further changes as set out in this report.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council may decide to retain its Code in its current form, make minor variations or remove the current provisions relating to Affected Interests in their entirety. There is no statutory requirement to include provisions relating to Affected Interests in its Code.

5 SUPPORTING INFORMATION

- 5.1 The Localism Act 2011 ("the Act") requires the Council to adopt a Code of Conduct dealing with its Members and Co-opted Members when they are acting in that capacity and the provision it considers appropriate in respect of the registration and disclosure of pecuniary and non pecuniary interests.
- 5.2 There is no prescribed form of Code required under the Act but any Code adopted must, when viewed as a whole, be consistent with the Nolan principles (so called because they were first set out by the Committee for Standards in Public Life when the late Lord Nolan was chairman), namely:-

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

- 5.3 Also, the Code must include such provision which the Council considers appropriate in respect of the registration and disclosure of pecuniary and other interests. The Code should not contain anything which is inconsistent with the new provisions which the Act sets out in relation to Disclosable Pecuniary Interests (which term is defined in the Act and regulations made thereunder).
- 5.4 The main alterations to the former prescribed Code (pre 2012) introduced by the Act were around the issue of the registration and disclosure of interests and the consequences of having an interest. The pre 2012 Code defined a lengthy list of “Personal Interests” which required registration and disclosure. In addition, that Code provided that if a Personal Interest was such that a reasonable member of the public would reasonably conclude that the Member’s judgement of the public interest in relation to the matter would be affected by the Personal Interest then the interest would also fall into the category of “Prejudicial Interest”. The main consequences of having a Prejudicial Interest were that the Member was precluded from either participation in the decision making process or “improperly” seeking to influence a decision about the matter.
- 5.5 The Act replaced the concept of “Personal Interests” and “Prejudicial Interests” with “Disclosable Pecuniary Interests”. The consequences of having a Disclosable Pecuniary Interest are similar to those previously pertaining to Prejudicial Interests but failure to comply now also constitutes a criminal offence.
- 5.6 The Council’s current Code faithfully reflects the Act in so far as it relates to Disclosable Pecuniary Interests. However, under the Act, only the interest of the Member or his/her spouse or partner falls within the definition of Disclosable Pecuniary Interest. Accordingly, the interest of a child or close friend of the Member does not fall within the definition and therefore a Member would not be infringing the statutory requirements if, for example, he/she participated in a decision whether or not to approve an application for a planning permission or a grant submitted by such a person.

Affected Interests

- 5.7 In order to address that statutory lacuna the Council’s current Code formulates the concept of an “**Affected Interest**” (Paragraph 8 of Code).
- 5.8 The Code states that;

You have an Affected Interest in a matter if:-

(a)

(i) a decision in relation to that matter might reasonably be regarded as affecting the financial position of an Affected Person to a greater extent than the majority of other residents in your Ward, or

(ii) it is an application for a Licence, permission or consent made by an Affected Person or which (to your knowledge) an Affected Person has made objection to the Council

AND

(b) a member of the public, who knows the relevant facts, would reasonably think that the interest is so significant that it would be likely to prejudice your judgement of the Public Interest.

- 5.9 An Affected Person is not just a Member or their spouse but also extends to a range of relatives, employees, employers, business arrangements as well as anyone with whom a Member has a “close association”
- 5.10 It can be seen from paragraph 5.8 above that whether or not a Member has an Affected interest in a matter is a judgment based on what an objective observer would conclude. It is not an exact science but a test of reasonableness. This has created some uncertainty amongst Members. On occasion Members with similar interests have reached differing conclusions on similar facts as to whether or not they need to disclose an interest as an Affected Interest.
- 5.11 Affected Interests are a local creation which go beyond the minimum statutory requirements of the Act and cover a broader range of conflicts than Disclosable Pecuniary Interests. There is no legal requirement to adopt such provisions and it is open to the Council to re-evaluate their effectiveness based on experience since 2012.

Membership of External Organisations and Associations (Paragraph 10 of Code)

- 5.12 A Working Group set up in 2012 introduced provisions in the Code relating to membership of external organisations. It was recognised that a number of Councillors were (and remain) involved in the activities of other community groups or public bodies. The Working Group considered at the time that involvement in such organisations should not preclude a Member from involvement in the decision making process on a matter which affects such a group or body although if the Member is not appointed by the Council the Member should, in the interests of transparency, declare the interest (which would then be registered). If the Member has been appointed by the Council there should be no requirement to declare any interest as the appointment will already be a matter of public record (appointments to external organisations are set out each year in a report to the Annual Council Meeting).
- 5.13 Paragraph 10 of the Code reflects the views of the Working Group relating to such interests. There is a possibility that in a limited number of instances the involvement of a Member with such an interest could infringe the common law relating to bias and for that reason paragraph 10.3 provides that when such circumstances exist a Member should not involve themselves in the decision making process even though they may not have a Disclosable Pecuniary Interest or an “Affected Interest”

Registration of Gifts and Hospitality (Paragraph 11 of Code)

- 5.14 The pre 2012 Code specified a threshold of £25 (below which gifts/hospitality need not be registered). The Working Group in 2012 considered that the threshold should be increased to £75. The suggestion gave rise to a significant level of debate at the Standards Committee, some Members of which felt that all gifts or hospitality should

be registered. Although not ruling out an increase the Standards Committee recommended that the threshold should remain at £25 until such time as it is able to give more detailed consideration on receiving a report specifically addressing the issue. There was a degree of discussion on the matter when the draft Code was considered by the Governance and Audit Committee. That Committee agreed that it would consider the issue further once the Standards Committee had had an opportunity to formulate its considered view. The threshold has however remained at £25 to date.

Code of Conduct Working Group

- 5.15 At its meeting of 27 June the Code of Conduct Working Group considered the pros and cons of removing Affected Interests from the Code as they are not required in law and have created some confusion amongst Members at recent meetings as to their application. The Group felt that the provisions needed to be retained in some form as to remove them would create a public perception that the Council was “lowering the bar” in terms of ethical governance.
- 5.16 It recommended that:
- The existing reference to “Affected Person” in Paragraph 8.1 (a) (i) of the Code be extended to read “Affected Person/Entity” in order to reinforce its application to corporate bodies such as Companies and Partnerships.
 - The requirement for Members disclosing Affected Interests to refrain from participating and voting at the meeting is removed.
 - It be made clear in the text that the provisions of paragraph 10 requiring non Council nominees on outside bodies does not apply to Council nominees
 - A paragraph introducing the role of bias and predetermination be included in the Code
 - No changes be made to the existing provisions relating to the registration of gifts and hospitality (Paragraph 11)

The Appendix to this report incorporates a copy of the Code with tracked changes evidencing the recommendations.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 None

Equalities Impact Assessment

- 6.3 None

Strategic Risk Management Issues

- 6.4 None

7 CONSULTATION

Principal Groups Consulted

7.1 Code of Conduct Working Group, CMT, Governance & Audit Committee

Background Papers

Appendix A – Bracknell Forest Council Code of Conduct for Members and Co-Opted Members with tracked amendments

Contact for further information

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