



## **GOVERNANCE & AUDIT COMMITTEE**

**20 SEPTEMBER 2017**

### **SUPPLEMENTARY PAPERS**

**TO: ALL MEMBERS OF THE GOVERNANCE & AUDIT COMMITTEE**

The following papers were circulated at the above meeting.

Alison Sanders  
Director of Resources

	<b>Page No</b>
<b>6. AFFECTED INTERESTS AND RELATED MATTERS</b>	<b>3 - 12</b>
To propose amendments to the provisions relating to Affected Interests in the Council's Code of Conduct for Members. This is following recommendations of the Code of Conduct Working Group which convened on 27 June 2017.	

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## SECTION 13 – CODE OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS

### 1. INTRODUCTION

- 1.1 This Code of Conduct has been adopted by the Council pursuant to the Localism Act 2011 and the duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Council.
- 1.2 Failure to comply with the requirements of Section 7 of this Code, other than paragraph 7.3(c), constitutes a criminal offence for which you may be prosecuted. Failure to comply with any of the other sections of the Code or paragraph 7.3(c) may result in public censure of you by the Council.
- 1.3 Common law developed by the courts indicates that, at least in relation to “quasi-judicial” functions such as Licensing and Planning, Members should not participate if a reasonable member of the public who is neither complacent nor unduly sensitive or suspicious would in the circumstances conclude that there is a real possibility of bias. This Code requires Members to excuse themselves from involvement in decision making where they have a “Disclosable Pecuniary Interest” or an “Affected Interest” (as defined by the Code) in the matter under consideration. However, it is possible that when exercising such a “quasi-judicial” function interests other than Disclosable Pecuniary Interests or Affected Interests could lead a reasonable member of the public to conclude that there was a real possibility of bias on the part of a Member. In such circumstances the Member should not participate in the decision making process (*i.e. the Member should not vote nor, unless they are requested by the Chairman of the Committee on a point of clarification, speak on the matter*). In cases of doubt or difficulty advice should be sought from the Borough Solicitor.

### 2. APPLICATION

- 2.1 This Code of Conduct applies to you when you are acting as a Member or Co-opted Member of the Council. A Co-opted Member is a person who is not a Borough Councillor but who –
- (a) is a Member of any Committee or sub-Committee of the Council; or
  - (b) is a Member of, and represents the Council on, any Joint Committee or joint Committee of the Council

and who is entitled to vote on any question that falls to be decided at any meeting of the Committee or sub-Committee.

Throughout this Code “Member” shall be deemed to refer also to Co-opted Members.

- 2.2 This Code of Conduct is consistent with and based upon the following principles:-
- Selflessness
  - Integrity
  - Objectivity

Last updated: February 2014 – Part 4: Section 13

- Accountability
- Openness
- Honesty
- Leadership

The above terms are expanded in the Annexe to this Code under the heading 'The Principles'.

### **3. GENERAL OBLIGATIONS**

3.1 You must treat others with respect.

3.2 You must not:-

- (a) do anything which may cause the Council to be in breach of any duty not to discriminate contained in the Equality Act 2010;
- (b) bully any person;
- (c) do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the Council;
- (d) conduct yourself in a manner which could reasonably be regarded as bringing your office as a Member of the Council into disrepute;
- (e) 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.

### **4. ACCESS TO AND DISCLOSURE OF INFORMATION**

4.1 Do not disclose information given to you in confidence by anyone (including exempt information provided to you by the Council) 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 to do so by law
- (iii) 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
- (iv) the disclosure is:-
  - (a) in the public interest
  - (b) made in good faith
  - (c) in the case of exempt information provided to you by the Council, only made after giving two clear working days notice of the intention to disclose (in writing, specifying the information proposed to be disclosed) has been given to the Chief Executive or in his absence the Deputy Chief Executive.

“exempt Information” means information described either as such or as confidential.

- 4.2 Do not prevent another person from accessing information if that person is entitled to do so by law.

## **5. DECISION MAKING**

- 5.1 When reaching decisions on any matter you must:-

- (a) have regard to any advice provided to you by *the Head of Paid Service (the Chief Executive)* by the Borough Treasurer and/or the Monitoring Officer pursuant to their statutory duties, and
- (b) give reasons for the decisions in accordance with any legal requirements or any additional requirements imposed by the Council.

## **6. RESOURCES**

- 6.1 When using or authorising the use by others of the resources of the Council you must:-

- (a) act in accordance with the Council’s requirements, and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes);

- 6.2 You must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

## **7. INTERESTS**

### **Disclosable Pecuniary Interests**

- 7.1 You have a Disclosable Pecuniary Interest if it falls within the description set out in the Schedule to this Code and either:-

- (a) it is your interest, or
- (b) it is an interest of your spouse or civil partner, a person with whom you are living as husband and wife/as if you were civil partners AND you are aware that such other person has an interest.

- 7.2 Within 28 days of becoming a Member you must notify the Monitoring Officer of any Disclosable Pecuniary Interests which you have. Where you become a Member as a result of re-election or re-appointment the requirement to notify the Monitoring Officer only applies in relation to Disclosable Pecuniary Interests not already notified.

- 7.3 If you are present at a meeting of the Council, a Committee, Sub-Committee, Joint Committee, the Executive or an Executive Committee and you are

aware that you have a Disclosable Pecuniary Interest in any matter to be considered:-

- (a) if the interest is not registered you must disclose the interest to the meeting **and** notify the Monitoring officer within 28 days;
- (b) you must not participate in discussion of the matter, or vote on the matter **unless** you have been granted a dispensation by the Monitoring Officer or by the Governance and Audit Committee.
- (c) if you are required by the Council's Standing Orders to withdraw from the meeting you should notify the Democratic Services Officer in attendance at the meeting that you are withdrawing as you have an Interest in the matter.

7.4 If you are an Executive Member acting alone in the discharge of a Council function (i.e. if the matter falls within the Executive Member's portfolio) and you have a Disclosable Pecuniary Interest in a matter:-

- (a) you must not take any steps in relation to the matter other than for the purpose of enabling it to be dealt with by another Member, and
- (b) if the interest is not registered you must notify the Monitoring Officer of the interest.

7.5 If you have a Disclosable Pecuniary Interest in a matter you must not seek improperly to influence a decision about it.

## **8. AFFECTED INTERESTS**

8.1 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/[Entity](#) 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.

The following are "Affected Persons":-

- (a) you
- (b) your spouse/partner
- (c) your parents and grandparents and those of your spouse/partner
- (d) your children and grandchildren and those of your spouse/partner

Last updated: February 2014 – Part 4: Section 13

- (e) your sibling or his/her spouse or partner
  - (f) your employer, business partner or any person whom you have undertaken work for in the previous two years, and
  - (g) your employee
  - (h) a company in which the total nominal value of the securities held by you/your spouse or partner exceeds £25,000 or more than ten per cent of the total issued share capital
  - (i) a company which you, your spouse, partner, parent, grandparent, child or grandchild is a Director of
  - (j) a company which your sibling or his/her spouse or partner is a Director of
  - (k) a Limited Liability Partnership in which you, your spouse, partner, parent, grandparent, child or grandchild is a Partner
  - (l) a Limited Liability Partnership in which your sibling or his/her spouse or partner is a Partner
  - (m) a person with whom you have a close association
- 8.2 Within 28 days of becoming a Member you must notify the Monitoring Officer (in order for him/her to make entries in the Register of Member's Interests):-
- (a) the name of any company which you, your spouse or partner are a director of and
  - (b) the name of any Limited Liability Partnership which you, your spouse or partner are a partner in.
- 8.3 If you are present at a meeting of the Council, a Committee, Sub-Committee, Joint Committee, or an Executive Committee and you are aware that you have an Affected Interest in a matter to be considered:-
- (a) if the interest is not registered you must disclose the interest to the meeting **and** (unless you have previously notified the Monitoring Officer of the interest) notify the Monitoring Officer within 28 days (if the Monitoring Officer determines that the interest is a Disclosable Pecuniary Interest the interest shall be entered on the Council's register of interests).
  - ~~(b) you must not participate in discussion of the matter or vote on the matter **unless** you have been granted a dispensation by the Monitoring officer or by the Governance and Audit Committee.~~
  - ~~(c) if you are required by the Council's Standing Orders to withdraw from the meeting you should notify the Democratic Services Officer in attendance at the meeting that you are withdrawing as you have an interest in the matter.~~
- 8.4 If you are an Executive Member acting alone in the discharge of a Council function (i.e. if the matter falls within the Executive Member's portfolio) and you have an Affected Interest in a matter:-
- (a) you must not take any steps in relation to the matter other than for the purpose of enabling it to be dealt with by another Member, and
  - (b) if the interest is not registered you must notify the Monitoring Officer of the interest

Last updated: February 2014 – Part 4: Section 13

- 8.5 If you have an Affected Interest in a matter you must not seek improperly to influence a decision about it.

## **9. SENSITIVE INTERESTS**

- 9.1 If you have a Disclosable Pecuniary Interest or an Affected Interest but you consider that disclosure of the interest could lead to you or a person connected with you being subject to violence or intimidation **and** the Monitoring Officer agrees with that assessment then instead of disclosing the interest you need only disclose *the fact* that you have a Disclosable Pecuniary Interest or an Affected Interest (as the case may be) *without giving details of that interest*.

## **10. MEMBERSHIP OF EXTERNAL ORGANISATIONS AND ASSOCIATION**

- 10.1 This section of the Code applies where you are a member of or in a position of general control or management of any body:-

- (a) exercising functions of a public nature
- (b) directed to charitable purposes, or
- (c) one of whose principal purposes includes the influencing of public or policy (including any political party or trade union)

and you have **not** been appointed or nominated in such capacity by the Council.

- 10.2 Within 28 days of becoming a Member you must notify the Monitoring Officer of your membership/position. Where you become a Member as a result of re-election or reappointment the requirement to notify the Monitoring Officer only applies in relation to a membership/position not already notified. The membership/position will be recorded on the Council's register of Member's interests.
- 10.3 If you are present at a meeting of the Council, a Committee, Sub-Committee, Joint Committee, the Executive or an Executive Committee at which a matter is to be considered which affects that body to a greater extent than the majority of residents in your Ward you shall disclose to the meeting your connection to the body immediately prior to consideration of the matter. You need not withdraw from the meeting but you should within 28 days notify the Monitoring Officer of the membership/position unless notification has previously been given.

## **11. REGISTRATION OF GIFTS AND HOSPITALITY**

- 11.1 You should promptly notify the Head of Democratic and Registration Services of :-

- (a) gifts or hospitality the value of which exceeds £25.
- (b) gifts or hospitality (of any value) the value of which combined with the value of any other gift or hospitality from the same source providing the gift or hospitality in the preceding period of one year exceeds £25

Last updated: February 2014 – Part 4: Section 13



which you and/or your spouse/partner receive because (or which a reasonable member of the public would infer because) you are a Member of the Council or you have been appointed to any position by or on behalf of the Council.

Where the value is not immediately apparent the value is that which a reasonable member of the public would estimate for the gift or hospitality. You should err on the side of caution i.e. if there is any doubt as to whether the gift or hospitality is registrable you should register it.

The notice to the Head of Democratic and Registration Services should state:-

- (a) the nature of the gift or hospitality provided
- (b) the identity of the source providing the gift or hospitality, and
- (c) the date on which the gift or hospitality was provided.

The register of gifts or hospitality will be made available for public inspection.

## **12. BIAS AND PREDETERMINATION**

12.1 You should be aware that in addition to the Provisions of this Code relating to Disclosable Pecuniary Interests and Affected Interests, a decision that you are involved in making, either as an individual Councillor or as a Member of a Committee can be set aside if it is found that in making your decision you closed your mind to all considerations other than your already held view.

12.2 The test applied by Courts on establishing whether a decision has been tainted by bias or predetermination is whether the circumstances were such as would lead a fair minded and informed observer to conclude that there was real risk that you had predetermined the outcome.

12.3 In addition to a decision being set aside as a result of bias or predetermination you could be found to have brought your Council and the Office into disrepute under paragraph 3.2d of the Code.

## SCHEDULE

### **Categories of Disclosable Pecuniary Interests**

<b><u>Subject</u></b>	<b><u>Prescribed Description</u></b>
Employment, office trade, professional or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	<p>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 you in carrying out duties as a Member, or towards your election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992</p>
Contracts	<p>Any contract which is made between you or a relevant person (or a body in which you or a relevant person has a beneficial interest) and the Council –</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged</p>
Land	Any beneficial interest in land which is within the Borough.
Licences	Any licence (alone or jointly with others) to occupy land in the Borough for a month or longer.
<b><u>Subject</u></b>	<b><u>Prescribed Description</u></b>
Corporate tenancies	<p>Any tenancy where (to your knowledge) -</p> <p>(a) the landlord is the Council; and</p> <p>(b) the tenant is a body in which you or a relevant person has a beneficial interest</p>
Securities	<p>Any beneficial interest in securities of a body where –</p> <p>(a) that body (to your knowledge) has a place of business or land in the Borough; and</p> <p>(b) either –</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share</p>

Last updated: February 2014 – Part 4: Section 13

capital of that body; or  
(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or a person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

### **Definitions**

“body in which you or a relevant person has a beneficial interest” means a firm in which you or a relevant person is a partner or a body corporate of which you or a relevant person is a Director, or in the securities of which you or a relevant person has a beneficial interest.

“director” includes a member of the Committee of management of an industrial provident society.

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for you or a relevant person (alone or jointly with another) to occupy the land or to receive income.

“relevant period” means the period of one year ending with the day on which you give a notification of your Disclosable Pecuniary Interests to the Monitoring Officer.

“relevant person” is a person falling within 7.1(b) above.

“securities” means shares, debentures, debenture stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

### **THE PRINCIPLES**

- **Selflessness**  
Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
- **Honesty and Integrity**  
Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour
- **Objectivity**  
Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability**  
Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
- **Openness**  
Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- **Leadership**  
Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.