

**Report of the City Solicitor**

**Report to General Purposes Committee**

**Date: 30<sup>th</sup> August 2012**

**Subject: Proposed amendments to the Members' Code of Conduct arising from DCLG Guidance**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: n/a Appendix number: n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. The purpose of this report is bring Members attention to new guidance from the Department of Communities and Local Government called "Openness and transparency on personal interests: A guide for councillors".
2. Amendments to the Members' Code of Conduct are proposed in light of guidance relating to Member participation in business in which a Member has a disclosable pecuniary interest.
3. Amendments are also proposed to Article 15 of the Constitution to enable the Standards and Conduct Committee to make recommendations directly to full Council regarding amendments to the Members' Code of Conduct in future.

**Recommendations**

4. Members are also asked to consider whether any representations should be made to DCLG on the new Guidance
5. Members of General Purposes Committee are asked to recommend to full Council that:
  - the proposed amendments to the Members' Code of Conduct (as shown in Appendix 2) be approved; and
  - the proposed amendment to Article 15 of the Constitution (as shown in Appendix 3) be approved.

## **1 Purpose of this report**

- 1.1 The purpose of this report is bring Members attention to new guidance from the Department of Communities and Local Government called “Openness and transparency on personal interests: A guide for councillors”.
- 1.2 Amendments to the Members’ Code of Conduct are proposed in light of guidance received from DCLG restricting any Member participation in business in which a Member has a disclosable pecuniary interest.

## **2 Background information**

- 2.1 The DCLG have issued practical guidance (attached as Appendix 1 to this report) to further explain how the provisions of the Localism Act 2011 relating to Standards should be interpreted.
- 2.2 The guidance was published on Thursday 2<sup>nd</sup> August and Bob Neill MP wrote to all Council Leaders to let them know about the guidance.

## **3 Main issues**

- 3.1 The guidance clarifies various aspects of the legislation in relation to the Register of Members’ Interests, including requirements relating publishing, maintenance, and format.
- 3.2 However more significantly the guidance clarifies the extent of the prohibitions in place for Members who have a disclosable pecuniary interest in a matter being considered at a meeting.
- 3.3 If a Member is present at a formal meeting of the Council, and they have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, the Localism Act stipulates that they must not:
  - Participate in any discussion of the business at the meeting, or if they become aware of their disclosable pecuniary interest during the meeting, participate further in any discussion of that business, or
  - Participate in any vote or further vote taken on the matter at the meeting.
- 3.4 The guidance states that “these prohibitions apply to any form of participation, including speaking as a member of the public”.
- 3.5 In Leeds, the Members’ Code of Conduct makes provision for Members to make representations, answer questions or give evidence relating to a matter in which they have a disclosable pecuniary interest, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- 3.6 Given the wording of the guidance it is clear that DCLG are of the view that it is no longer possible to draw such a distinction between participation in any discussion and making representations, and Members attending the meeting to make representations would be committing a potential criminal offence.

- 3.7 As this is a significant departure from previous practice and places restrictions on Members ability to make direct representations which do not apply to the public, Members may wish Officers to make representations to DCLG on these matters.
- 3.8 In any event, to ensure Members do not inadvertently fail to comply with conduct provisions, where a Member with a disclosable pecuniary interest wishes to make representations on a matter, it would appear that to do so it would be necessary for the Member to put the representation in writing or ask a colleague or professional representative to make their representations on their behalf.
- 3.9 In light of this change in emphasis, and the inherent risks Members might be otherwise exposed to, General Purposes Committee is asked to recommend that the Code of Conduct is amended to remove this paragraph. Appendix 2 contains the proposed amendments.

#### Process for amending the Members' Code of Conduct

- 3.10 The Standards and Conduct Committee currently has the power to “advise the authority in relation to the adoption, revision or replacement of the code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity”. This is part of the Committee’s wider role of promoting and maintaining high standards of conduct by members and co-opted members of the authority.
- 3.11 However, Article 15 of the Constitution states that where approval of full Council is required for changes in Parts 3 to 5 of the Constitution, then they will only be approved by full Council after consideration of the proposal by the General Purposes Committee and following advice from the Monitoring Officer.
- 3.12 It is proposed that Article 15 is amended to allow the Standards and Conduct Committee to make any recommendations for amendment to the Members’ Code of Conduct (Part 5(a) of the Constitution) directly to full Council, rather than through the General Purposes Committee. This will mean that necessary amendments can be made much more quickly, whilst allowing the Standards and Conduct Committee to fully exercise its role. The proposed amendments are shown in Appendix 3.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The guidance has been published on the DCLG website and has been circulated to all Council Leaders.
- 4.1.2 The Parish and Town Councils in Leeds will need to be advised of the implications of the guidance so that they can amend their own codes of conduct accordingly.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There are no implications for equality and diversity arising from this report.

### **4.3 Council policies and City Priorities**

- 4.3.1 Principle 3 of the Code of Corporate Governance states that the Council will keep the Members’ Code of Conduct under review, as well as any supplementary

codes and protocols. The Codes of Practice in relation to Licensing and Planning will also need to be further reviewed to ensure that any reference to Members being able to make representations is removed.

#### **4.4 Resources and value for money**

4.4.1 There are no resource implications arising from this report.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 The guidance released by the DCLG explains how the legislation underpinning the new standards regime should be interpreted, and therefore the Council should have regard to the guidance.

4.5.2 Adopting, revising or replacing the Members' Code of Conduct is a function of the full Council, and therefore General Purposes Committee is being asked to make a recommendation to full Council for approval.

4.5.3 There are no implications in relation to access to information or call in.

#### **4.6 Risk Management**

4.6.1 If the Code of Conduct is not amended to reflect the guidance from DCLG there is a risk that Members may place themselves at risk of committing a criminal offence by participating in the meeting with a disclosable pecuniary interest.

### **5 Conclusions**

5.1 The guidance (attached as Appendix 1 to this report) provides clarity on the extent to which Members are able to participate in business in which they have a disclosable pecuniary interest. As a result of this clarification amendments are proposed to the Members' Code of Conduct (attached as Appendix 2).

### **6 Recommendations**

6.1 Members are also asked to consider whether any representations should be made to DCLG on the new Guidance.

6.2 Members of General Purposes Committee are asked to recommend to full Council that:

- the proposed amendments to the Members' Code of Conduct (as shown in Appendix 2) be approved; and
- the proposed amendment to Article 15 of the Constitution (as shown in Appendix 3) be approved.

### **7 Background documents<sup>1</sup>**

None

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.