

**Report of City Solicitor**

**Report to Standards and Conduct Committee**

**Date: 29<sup>th</sup> November 2013**

**Subject: Openness and Transparency on Personal Interests: A Guide for Councillors**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<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: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. This report considers updated guidance entitled "Openness and Transparency on Personal Interests: A Guide for Councillors" released by DCLG in September 2013.
2. The guidance in particular considers requirements in relation to the registration and declaration of interests arising from membership of trades unions.
3. The guidance also considers the position of Members with a Disclosable Personal Interest in land for an area in which they are involved in setting Council tax.

**Recommendations**

4. Members are invited to consider the contents of this report and make recommendations as to whether any amendments are necessary to the Members' Code of Conduct.

## **1 Purpose of this report**

- 1.1 This report considers the Members' Code of Conduct adopted by Leeds City Council in light of guidance released by DCLG in September 2013 and commentary available in relation to the same.

## **2 Background information**

- 2.1 Following amendments to the Local Government Act 2000 enacted through the Localism Act 2011, Leeds City Council adopted a new Members' Code of Conduct (the Code) which came into effect in July 2012.
- 2.2 The Code was developed through a working group, advised by the Monitoring Officer as to the requirements of the amended legislation in relation to the seven principles set out in Section 28 of the Localism Act 2011 (the Act), and as to the definition of Disclosable Pecuniary Interests (DPIs) set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (the Regulations).
- 2.3 In addition to DPIs the working group made recommendations in relation to the registration and declaration of interests other than pecuniary interests. The adopted Code therefore makes provision for the registration of the receipt of gifts and hospitality. Whilst the Code makes no provision in relation to the registration of any other 'other interests', there is a place in each Member's register where they are able to record "any other interests". Some Members use this opportunity to register their membership of trades unions.
- 2.4 As originally adopted, the Code made provision for the declaration of 'other interests' in meetings. However at its meeting of 27th February 2013 Full Council amended the Code to remove this provision as the term "other significant interests" was considered "imprecise and exceptionally difficult to regulate via a complaints process". In the alternative a footnote was included to the paragraph relating to Honesty and Integrity which provides that:-

*Where you are present at a formal meeting of the authority and identify any relevant and significant interest which is not a disclosable pecuniary interest and which relates to the business being conducted, you may declare the interest to the meeting, if you consider it is in the public interest to do so. You may also choose not to participate in the business as a result, although you are not obliged to do so.*

## **3 Main issues**

- 3.1 Although the Act does not make provision for the Secretary of State to issue guidance, and does not require that councils have regard to any guidance issued, in April 2012 DCLG published an illustrative text for a local Code of Conduct. In March 2013 DCLG issued guidance entitled "Openness and transparency on personal interests: a guide for Councillors". This guidance notes that parliament abolished the old Standards Board regime which was "centrally-imposed" and

“bureaucratic”, and that the new arrangements “mean that it is largely for councils themselves to decide their own local rules”.

3.2 In September 2013 both the illustrative Code and the guidance were amended. The amendments related to two issues:-

- Interests arising out of membership of trades unions; and
- DPIs in the matter of setting council tax.

#### Interests Arising Out Of Membership Of Trades Unions

3.3 The guidance recommends that each member is required to register DPIs and any other personal interest which the authority has determined should be registered. In Leeds, as described at Section 2 above, it has been determined that Members should register gifts and hospitality in addition to their DPIs. Provision is also made for Members to register any ‘other interests’ should they wish to do so.

3.4 In the amendments to the guidance made in September 2013 DCLG give specific guidance in relation to membership of Trades Unions, stating that “You should ensure that you register all personal interests that conformity with the seven principles requires. These interests will necessarily include your membership of any Trade Union.” The guidance suggests that the principle of integrity requires that:-

“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships”

3.5 The guidance goes on to state that:-

“All sitting councillors need to register their declarable interests – both DPIs, and other interests that must be declared and registered as required by your authority’s code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union”

3.6 Graeme Creer, a consultant at Weightmans LLP, published an analysis of the amended guidance in September 2013. In his analysis he makes the following points:-

3.6.1 Guidance issued by the Secretary of State does not have the force of law;

3.6.2 The legal requirements in respect of the registration of DPIs are set out in the Regulations. These regulations require the registration of sponsorship, but the interest is the sponsorship, including any payment or financial benefit from a trade union, not the membership of the trade union in itself. Not all councillors who are members of trades unions receive financial support from those unions;

- 3.6.3 Trade union membership does not place the councillor “under any obligation” to act in a particular way because of that membership;
- 3.6.4 It is not necessarily “inappropriate” for a union to seek to exercise influence over a member, for example by briefing that member in relation to the union’s position in relation to a matter;
- 3.6.5 The wording quoted at paragraph 3.5 above, quoted itself in the guidance, does not reflect wording in the equivalent “Nolan” principle, or the Relevant Authorities (General Principles) Order 2001 (now repealed) and has no legal resonance;
- 3.6.6 Although the illustrative Code has been amended there is no requirement for authorities to amend their own codes, and given that the guidance does not carry the force of law such a requirement would be an exhortation rather than an obligation; and finally,
- 3.6.7 Should an authority amend its Code to reflect this guidance, that there would be a correlative need to consider membership of other lobbying groups such as political parties and charities who may seek to influence Members, at the risk of returning to the narrow bureaucratic approach which the guidance indicates the Act and Regulations are seeking to move away from.
- 3.7 Having considered the guidance, and the provision made in the Code for Leeds City Councillors to register and declare other interests, the Monitoring Officer considers that Members seeking to comply with the guidance are able to do so through the provision for registration and declaration of ‘other interests’.
- 3.8 Members are invited to consider whether they are content to maintain the existing arrangements in relation to the declaration and registration of interests, or whether they would seek an amendment to the existing Code in the light of the amended guidance.

### Council Tax

- 3.9 On 7<sup>th</sup> February 2013 the Chief Executive granted a dispensation for all Members to enable their participation in setting the budget notwithstanding the potential for a DPI in the matter to arise out of their beneficial interest in land in relation to which they would be liable for the payment of council tax.
- 3.10 The amended guidance issued by DCLG gives specific guidance in this regard as follows:-

“Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since

decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.”

- 3.11 Standards and Conduct Committee is invited to consider, whether in light of this guidance, it would wish to advise that Members should seek further dispensations in relation to setting council tax for future years.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.8 There are no implications arising from this report.

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

- 4.2.1 There are no implications arising from this report.

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

- 4.3.1 The registration and declaration of interests is in accordance with the Councils value in relation to being open, honest and trusted.

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

- 4.4.1 There are no implications arising from this report.

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

- 4.5.1 The legislative background to the amended guidance is set out in Section 2 of this report.

### **4.6 Risk Management**

- 4.6.1 There is a potential risk of challenge to decisions in which members have participated without taking the necessary steps to register and disclose their interests. The Monitoring Officer is of the view that the provisions of the Code in Leeds provide for Members to take the appropriate action in relation to their own interests.
- 4.6.2 A dispensation in relation to council tax would provide a belt and braces approach to the matter in view of the fact that the guidance issued by DCLG does not have the force of law.

## **5 Conclusions**

5.1 Guidance issued by the Secretary of State has recently been amended to indicate that:-

- Members should register and declare any interest arising as a result of their membership of trades unions; and
- There is no interest arising as a result of land ownership in relation to the setting of council tax.

5.2 Having considered the amended guidance the Monitoring Officer is of the view that the Code and arrangements in place for the registration and declaration of interests in Leeds provide for Members to register and declare their membership of any trade union, should they wish to do so.

5.3 The Monitoring Officer notes the advice of DCLG in relation to interests relating to the setting of council tax, and seeks the committee's views in relation to whether Members should be invited to seek dispensations in future years in order to minimise the risk of legal challenge in relation to future decisions.

## **6 Recommendations**

6.1 Members are invited to consider the contents of this report and make recommendations as to:-

6.1.3 whether any amendments are necessary to the Members' Code of Conduct; and

6.1.4 whether Members should be invited to seek dispensations in relation to setting council tax in future years.

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

7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.