



PART B:	RECOMMENDATIONS TO COUNCIL
REPORT TO:	OVERVIEW AND SCRUTINY COMMITTEE
DATE:	5 JULY 2012
REPORT OF THE:	COUNCIL SOLICITOR AND MONITORING OFFICER ANTHONY WINSHIP
TITLE OF REPORT:	NEW MEMBERS' CODE OF CONDUCT
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 To agree a final Code of Conduct to recommend to Council on 12 July 2012.

2.0 RECOMMENDATION

2.1 To recommend Council to adopt a new Code of Conduct as set out in Annex 1.

3.0 REASON FOR RECOMMENDATION

3.1 It is important for the Overview and Scrutiny Committee to note and approve the new Members' Code of Conduct.

4.0 SIGNIFICANT RISKS

4.1 No significant risks have been identified in preparing this report – see Risk Matrix (Annex A).

4.2 It is helpful for the Monitoring Officer and for the Overview and Scrutiny Committee, in performing their functions, to note and approve the new Members' Code of Conduct which is instrumental in the drive to maintain high standards generally. This reduces the risk of the breakdown of standards with consequential effects upon the reputation of an authority and the services it delivers.

REPORT

5.0 BACKGROUND AND INTRODUCTION

5.1 In the wake of the provisions in the Localism Act 2011 which has dismantled the Local Government Act 2000 local government standards regime, the Annual Meeting of Council on 17 May 2012 adopted a new Code of Conduct (with the exception of

the part dealing with interests) and arrangements for dealing with allegations of misconduct by Members.

5.2 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (the 2012 Regulations) were published on the evening of Friday, 8 June 2012. These regulations define Disclosable Pecuniary Interests.

6.0 POLICY CONTEXT

6.1 The adoption of a Code of Conduct contributes positively to the Council's Corporate Governance arrangements by ensuring that the Council maintains high standards of conduct.

7.0 REPORT DETAILS

7.1 Members are advised of the following key points:-

- (i) The Annual Council meeting on 17 May 2012 resolved to adopt the Local Government Association Template Code with effect from 1 July 2012.
- (ii) A revised draft Code of Conduct incorporating provisions relating to interests is attached as Annex 1.
- (iii) The last Standards Committee meeting on 14 June 2012 recommended the Overview and Scrutiny Committee to consider the provisions relating to interests in a draft code from Bevan Brittan. This is attached as Annex 2.

7.2 The "Interests" part of the draft code includes the following provisions:

- a section on Disclosable Pecuniary Interests. This incorporates the descriptions of interests contained in the regulations. This is considered helpful to start explaining to Members what the statutory provisions entail. It is recommended to include something on these lines as an interests section of the code.
- A draft of a possible interests section for the Council's code. This seeks to replicate the requirements of the last code, but excluding the statutory requirements for disclosable pecuniary interests. The drafting follows where possible the drafting of the current code. This is seen as a useful starting point for firming up the Council's code.

7.3 Having two sets of rules to deal with Members interests is apparently an improvement according to the Government. It remains to be seen whether or not those affected and involved in applying them have a different perspective.

7.4 As the regulations exclude any reference to gifts and hospitality, Members are recommended to consider making provision in the code for notification.

7.5 The following key points can be made about the Interests part of the Code arising from the regulations:-

- § The regulations identify circumstances of bias law which were represented in the current code made under the Local Government Act 2000, and indeed were covered in general terms in the 1990 code.

- § Section 30 of the Localism Act 2011 extends disclosable pecuniary interests of councillors to their spouse/partner, but the interests of other members of a councillor's family and persons having a close association with the councillor are not included. Such interests may well amount to bias and Local authorities would be well advised to include provision in their own local codes to provide for disclosure and non participation in decision making in relation to the interests of such persons in order to minimise the risk of bias in their decision making. The result of both statutory provision and local provision for similar types of interest would seem to create a more complicated structure than the current arrangements of a single code.
- § The regulations exclude the well applied judicial test of bias contained in paragraph 10 of the current code in the definition of prejudicial interest. Again, it would seem appropriate for a local authority to include this test in their local codes as a means of enabling councillors to make the judgement as to whether the interest (other than a disclosable pecuniary interest) they have (or their spouse or family member or person having close association) is one in respect of which they should exclude themselves from involvement in any decision.

A consequence of exclusion of this test from the regulations, and their stricter approach, is that it would be possible for a minor interest (eg in relation to land or a contract) that has been notified to result in the requirements of Section 31 of the Localism Act 2011 applying, excluding a councillor from involvement in decision making in circumstances where the application of the test would not have so excluded the councillor. The position could be remedied by a dispensation, but that is added bureaucracy, and is unlikely to be readily available at the time a meeting is taking place.

It may well be that the test applicable to civil law is difficult or inappropriate to incorporate in criminal law, but it is appropriate for Members to be aware of the practical consequences that could ensue by excluding the test.

- § The definition of a Disclosable Pecuniary Interest in the 2012 Regulations is significantly different from the former Prejudicial Interest definition. It applies to interests of the member and their spouse or partner. This means that for registration, it is wider than the old requirements which applied only to interests of the member him/herself. But for disclosure and non-participation purposes it is significantly narrower than the old definition, as it omits reference to the member's family or friends.

It is broader than the old definition of a prejudicial interest, in that it is a Disclosable Pecuniary Interest even if there is no likelihood that it might prejudice the member's perception of the public interest.

It is also narrower in that it applies only to very defined categories of interest and omits reference to matters likely to affect the wellbeing or financial standing of the member, or his/her family or friends. Councils are advised to adopt local Codes which require councillors at least to disclose where a decision would affect or relate to family or friends.

- There is no transitional provision for extending the life of the current code until such time as a new code is adopted by a local authority. Presumably this is a deliberate policy decision as part of terminating the old regime on 1 July 2012. It is arguable that councillors continue to be bound by their

undertakings to comply with their authority's code in their declarations of acceptance of office, and that the abolition of the statutory code does not of itself abolish the code adopted by the authority. If this is the legislative intention, it would be helpful if CLG would say so. However, in order for authorities to demonstrate compliance with their duties in Section 27 of the Localism Act 2011, they should now be aiming to adopt a new code (and arrangements etc) as soon as possible.

- Section 31(10) of the Localism Act 2011 enables standing orders to provide for the exclusion of a member from a meeting while any discussion or voting takes place in which, under Section 31(4) the member may not participate by reason of having a disclosable pecuniary interest. This provision does not extend to other interests within the authority's local code. Bearing in mind that DPIs are limited to the member and spouse, there are a range of other interests that are pecuniary (or 'prejudicial' in 2000 Act language) that would justify debarring members from involvement in decision making and, preferably, from the meeting room during debate and decision making. The exclusion of a member from involvement in democracy, in the absence of a clear statutory power to that effect, does risk legal challenge. But standing orders have been the framework for good governance and sound decision making for many decades. Judges will be sympathetic to that. It would seem sensible to include provision in standing orders, for exclusion of a member having a pecuniary or prejudicial interest under the local code. It puts the onus on members then to seek to challenge the legality of what is ethically un-arguable. Without a provision of this kind there is a risk of having a councillor sitting in a meeting that is debating and deciding on their son or daughter's planning application.
- The words 'it relates to or is likely to affect' which defines (in Paragraph 8 of the current code) the relationship of an interest to a matter to be, or being, considered, are absent from the description of a DPI. The effect would seem to narrow considerably the meaning of Section 31(1)(b) -'has a disclosable pecuniary interest in any matter'... So, for example, I have an interest in my property, but I do not have an interest in my neighbour's property. It would not, therefore, seem to be contrary to the DPI provisions to participate and vote on a planning application about my neighbour's property as I do not, under Section 31, have an interest in his property. The words 'relating to or affecting' my interest cannot be implied in criminal law, if they are not in the legislation. The effect seems to be that 'the matter to be considered, or being considered' must be *about* the councillor's interest for the requirements on participation etc to apply. If the matter merely relates to or affects the interest, but is not actually about the interest, then the councillor does not have a DPI. The limiting of the application of the DPI requirements would apply to all the descriptions of interests in the regulations. In order to plug this rather wide gap, it is recommended that the Council includes in its local code a re-write of the DPI rules but including the 'relating to or affecting' part of the definition.

§ In addition to the DPI Regulations and the Commencement Order, CLG have also made a new Declarations of Acceptance of Office Order to come into force on 9 July 2012. It will apply to councillors elected after 9 July 2012. What it also does, pursuant to the amendment of S52(2) of the 2000 Act by Schedule 4 paragraph 11 of the Localism Act, is to remove all reference to the code of conduct from the declaration of acceptance of office.

- § The regulations exclude mention of gifts and hospitality. Whilst Local authorities can make provision in their local codes about the receipt of gifts and hospitality, the sanctions available to local authorities are de minimis having regard to the sort of gifts and hospitality deployed by Messrs Poulson and T Dan Smith some decades ago, which led to the formulation of the 1975 code of conduct.
- § The wording of the employment etc description has the effect of excluding offices and vocations such as unpaid trusteeships, directorships, governorships and memberships etc, which are often bestowed on councillors, as well as membership of other public bodies such as parish councils and local sports, culture and community associations. These interests can, in certain circumstances, be pecuniary where the bias test in paragraph 10 of the current code would apply. Again local authorities are advised to make provision for this in their local codes, in order to minimise the risk of bias claims.
- § The general effect of the regulations is to considerably reduce what is to be covered by statute or statutory code in relation to bias circumstances in local government. It will be left to local authorities to make their own arrangements to minimise the risk of bias in respect of the wider gap that is not so covered. The risk, therefore, is that bias cases could well increase. Bearing in mind that the interests provisions in the codes of 1975, 1990 and under the local Government Act 2000 were primarily intended to identify and minimise the risk of bias, these regulations and the effect of the Act appear to be increasing the risk of judicial review challenges to Council and Committee decisions.

7.6 Members are advised that the Code of Conduct in Annex 1 relating to interests has sought to deal with the issues covered above.

8.0 IMPLICATIONS

8.1 No significant implications have been identified in preparing this report.

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Background Papers:

Localism Act 2011

Background Papers are available for inspection at:

Ryedale District Council Offices

NEW MEMBERS' CODE OF CONDUCT - ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
The Committee fails to have due regard to new developments and good practice.	The risk over time of the breakdown of standards with consequential effects upon the reputation of an authority.	2	B	There is no mitigation in this case	2	B

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

ANNEX A